United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

77-7145

ORIGINAL

THE GUARDIANS ASSOCIATION OF THE NEW YORK CITY POLICE DEPARTMENT, INC., THE HISPANIC SOCIETY OF THE NEW YORK CITY POLICE DEPARTMENT, INC., OSWALDO PEREZ and FELIX E. SANTOS,

Plaintiffs-Respondents,

-against-

CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK, DEPARTMENT OF PERSONNEL OF THE CITY OF NEW YORK, THE NEW YORK CITY POLICE DEPARTMENT, ALFONSE D'AMBROSE, individually and in his capacity as Chairman of the Civil Service Commission of the City of New York and Personnel Director of the City of New York, JAMES SMITH and JOSEPHINE GAMBINO, individually and in their capacity as members of the Civil Service Commission of the City of New York, and MICHAEL J. CODD, individually and in his capacity as Commissioner of the New York City Police Department,

Defendants-Appellants.

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ON APPEAL FROM JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX

Vol. 1-1a to 238a

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UNITED STATES COURT OF APPEALS
FILED
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DISTRICT	YR.	NUMBER	MO.	DAY	YEAR					23		OTHER	NUMBER	DEM.	YR.	NUMBER
208-1	76	1982	04	30		3	442	1		1	10		0857		76	1982

PLAINTIFFS

THE GUARDIANS ASSOCIATION OF THE NEW YORK CITY POLICE DEPARTMENT, INC., THE HISPANIC SOCIETY OF THE NEW YORK CITY POLICE DEPARTMENT, INC., PEREZ, OSWALDO SANTOS, FELIX E.

3/30

J.G.

DEFENDANTS

CARTER, J.

CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK, DEPARTMENT OF PERSONNEL OF THE CITY OF NEW YORK, THE NEW YORK CITY POLICE DEPARTMENT, D'AMBROSE, ALFONSE individually and in his capacity as Chairman of the Civil Service Commision of the City of New York and Personnel Director of the City of New York, SMITH, JAMES GAMBINO, JOSEPHINE individually and in their capacity as members of the Civil Service Commission of the City of New York, CODD, MICHAEL J. individually and in his capacity as Commisioner of the N.Y.C. Police Dept.

CAUSE

Suit challenging seniority layoff system of New York City Police Dept. as having discriminatory impact on black and Hispanic police officers.

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UNITED STATES DISTRICT COURT DOCKET

DC-111 (Rev. 1/75)

Relevant Docket Entries

76 Civ. 1982 The Guardians Assoc. of the N.Y.C. Police Dept. ET. AL. Civ. Serv. Of the N.Y

DATE	NR.	PAGE.2 PROCEEDINGS CARTER.J.
04-30-76	(1)	Filed complaint. Issued summons.
5-3-76		Fld Pltffs' OSC for an order forjprel inj ....ret. 5-12-76-10AM-Rm 318...Carter,J.
5-5-76		Fld Memo of Law in support of pltffs' motion for a prel inj.
4-30-76		Fld Affdvt & Order permitting Process Serive.....Clerk.
5-10-76		Fld Defts' OSC(Unsigned) to consolidate. (fld in 75 Civ 3128KTD)
5-10-76		Fld Memo End on bk of unsigned OSC...The within order is not signed but is to be fld in the records ofthe Court...So ORdered....Duffy, J.
5 3-76		Fld Summ s with Marshal's ret Served: NYC Plice Dept by P. Raich on 5-3-76.
5-11-76		Fld Defts' Notice of Motion to consolidate 76 Civ 1982 with and into 75CV 3128KTD. .....ret 5-18-76-Rm 906- beofore Duffy, J. (fld in 75 Civ 3128 KTD)
5-11-76		Fld Defts' Memo of Law in support of MOtion to consolidate.(fld in 75 C 3128KTD)
5-12-76		Fld Defts' Notice of Cross Motion to dismiss Complt....ret 5-12-76-10AM.
5-12-76		Fld Defts Memo of Law in opposition to plffs' application for prel inj.
5-12-76		Fld Pltffs memo of law in support of its motion for prel inj.
5-24-76		Fld Suppl Memo in support of pltffs' motion for a prel inj.
5-24-76		Fld defts' Notice of motion to quash subpoena....ret 5-24-76-5PM
5-27 76		Fld Memo End on bk of motion fld 5-11-76...Motion denied..So Ordered..Duffy,J mn (fld in 75 Civ 3128 KTD.)
5-17-76		HEARING BEGUN AND ADJOURNED to 5-24-76.
5-24-76		HEARING ADJ TO 6-10-76
6-10-76		Hearing continued & adjourned to June 30-76.
7-7-76		Fld Pltffs' affdvt in support of its application for TRO.
7-7-76		Fld Defts' " " opposition to pltff application for TRO.
7-8-76		Fld Memo End on bk of Unsigned TRO ...Pltffs' application for a TRO is denied. ....So Ordered.....Carter,J.mn
6-30-86		Hearing continued & adjourned to July 1-76.
7-1-76		Hearing continued & adjourned to July 7-76.
7-7-76		Hearing continued & adjourned to July 9-76.
7-9-76		Hearing continued & adjourned to July 22-76.
7-22-76		Hearing continued & adjourned to July 27-76.
8-2-76		Filed transcript of record of proceedings, dated May 21, 24, 27 & June 19, 22, 30 & July 6, 7
8-2-76		Filed transcript of record of proceedings, dated July 22, 27, 28-1976
9-7-76		Fld Pltffs' Proposed Findings of Fact, Concl of Law and relief req.
9-7-76		Fld Post Hearing memo of law in support of pltffs' motion for a prel inj.
9-7-76		Fld Pltffs' Appedix.
9-10-76		Fld Pltffs' Reply Memo in support of its m ion for a Prel Inj.
3-18-77		Fld Defts findings of facts & conclusions of law..
3-18-77		Fld Defts Post Trial Memorandum.
3-18-77		Fld OSC-Vol II....Exhibits. etc.
3-17-77		Fld Opinion#45702.....In Sum, defts have not satisfied Title VII yardsticks in respect of a 67 inch minimum height reqirement; accordingly, they are held to have violated Title VII.....Pltffs motions for certification of a pltff class and for a prel. inj with respect to both ahe entry level examinations and the height requirement are granted. The foregoing shall constitute thecourt's findings of fact and conclustions of law in accordance withFRCP 52(e)....It is so Ordered....Carter,J. mn
3-23-77		Fld Defts' affdvt in support of theirxxxxxx proposed order.

Continued on page#3

CIVIL DOCKET CONTINUATION SHEET Page#3 76 Civ 1982 RLC

PLAINTIFF	DEFENDANT	DOCKET NO. 76-1982
The Guardians Asso	Civil Serv. Comm of the City of NY	PAGE 3 OF ___ PAGES

DATE	NR.	PROCEEDINGS
3-30-77		Fld Pltffs' affdvt in support of proposed order.
3-30-77		Fld Pltffs Post Hearing Memo in support of their motion for Prel Inj.
3-30-77		Fld Defts' Memo in support of motion to reargue and for summ judg.
3-30-77		Fld Defts' affdvt in opposition to TRO.
3-30-77		Fld Order that the class shall consist of all those black and Hispanic NYC police offices whose seniority is lower than it would otherwise be but for the discriminatory practices of defts....All members of the class who were subject to layoffs in June 1975 shall be given constructive seniority dates which shall be the earli of the following(see order)....etc....The ptys are directed to confer with a view to submitting to the Court a proposal for a final order and decree herein..etc.. The ptys shall submit ~~mor~~ joint or, if necessary, separate proposals for a final decree and order within 30 days after the date of this order...etc...The Court retains jurisdiction for such period as is necessary to supervise this order and further proceedings herein and to determine the reasonable value of pltffs' attys' services.....Carter,J. mn
3-30-77		Fld Defts' Notice of Appeal to USCA from order ent 3-18-77...Notices mailed to K. Kimerling esq., Davis Polk & Wardwell esqs....on 3-31-77.

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By _____
Deputy Clerk

COMPLAINT

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

THE GUARDIANS ASSOCIATION OF THE NEW YORK CITY POLICE DEPARTMENT, INC., THE HISPANIC SOCIETY OF THE NEW YORK CITY POLICE DEPARTMENT, INC., OSWALDO PEREZ and FELIX E. SANTOS,	Judge Carter Civil Action No. 76Civ1592
Plaintiffs,	
-against-	COMPLAINT (Class Action)
CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK, DEPARTMENT OF PERSONNEL OF THE CITY OF NEW YORK, THE NEW YORK CITY POLICE DEPARTMENT, ALFONSE D'AMBROSE, individually and in his capacity as Chairman of the Civil Service Commission of the City of New York and Personnel Director of the City of New York, JAMES SMITH and JOSEPHINE GAMBINO, individually and in their capacity as members of the Civil Service Commission of the City of New York, and MICHAEL J. CODD, individually and in his capacity as Commissioner of the New York City Police Department,	
Defendants.	

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JURISDICTION

1. This is a civil action brought under Title 42 U.S.C. § 1981 providing for the equal rights of citizens and of all persons within the jurisdiction of the United States; Title 42 U.S.C. § 1983 barring deprivation under color of state law, statute, ordinance, regulation, custom or usage of rights, privileges and immunities secured by the Fourteenth Amendment to the Constitution of the United States; Title 42 U.S.C. §§ 2000e et seq. prohibiting the denial of equal employment opportunity on the basis of race, color or national origin; Article 5, § 6 of the New York State Constitution and §§ 50(6) and 52(2) of the New York

Civil Service Law providing that civil service appointments and promotions be made according to merit and fitness as determined by job-related examinations. Plaintiffs seek a declaratory judgment pursuant to Title 28 U.S.C. §§ 2201 and 2202. The matter in controversy, exclusive of interest and costs, exceeds the sum of ten thousand dollars ($10,000.00). Jurisdiction is conferred on this Court by Title 28 U.S.C. §§ 1331 and 1343(3)(4) and by 42 U.S.C. § 2000e-5(f)(3). Plaintiffs Hispanic Society and Oswaldo Perez have filed timely charges with the EEOC and have received notice from the Department of Justice of their right to institute this action under 42 U.S.C. § 2000e-5(f).

2. Class action allegations:

(a) Plaintiffs allege that this class action is maintainable under F.R. Civ. P. Rule 23(b)(2).

(b) The class consists of all those blacks and Hispanics* (hereafter collectively referred to as "Minorities") who are presently New York City police officers, but whose seniority is lower than it would otherwise be but for the the discriminatory practices of defendants. These practices include inter alia the use of discriminatory non-job-related entry level examinations and the maintenance of a discriminatory non-job-related height requirement.

(c) The class is so numerous that joinder of all members is impractical.

(d) Plaintiffs are members of the class or--in the case of the Guardians Association of

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* As used herein, the term Hispanics means persons with Spanish surnames or persons who were born or who are descended from persons who were born in Puerto Rico or Caribbean or South American countries.

the New York City Police Department, Inc. (the "Guardians Association") and the Hispanic Society of the New York City Police Department, Inc. (the "Hispanic Society")--membership organizations whose members are members of the class. The individual plaintiffs are members of the class whose seniority is lower than it would otherwise be but for the discriminatory practices of defendants. These individuals and the two associations will fairly and adequately protect the interests of the class.

(e) There are questions of law and fact which are common to the class. The common questions of fact include:

(i) the way in which seniority is determined in the New York City Police Department ("NYCPD");

(ii) the use of this seniority system to determine layoffs and recalls in the NYCPD;

(iii) the extent to which this seniority layoff system has had a disproportionately adverse impact on blacks and Hispanics;

(iv) the way in which the examinations promulgated by defendant Department of Personnel at the direction of the Civil Service Commission for entry into the NYCPD (the "entry exams") are prepared and administered;

(v) the extent to which these exams are valid in the sense that they test for

skills or achievements which are actually necessary to good performance in the position involved and in the sense that scores on these exams form a basis for prediction of performance in the position being tested for;

(vi) the extent to which these exams have had a disproportionately adverse impact on blacks and Hispanics;

(vii) the extent to which defendants' height requirement has had a disproportionately adverse impact on Hispanics.

The common questions of law include:

(i) the legality of determining seniority and order of layoffs and recalls on the basis of performance on discriminatory exams and height requirements;

(ii) the legality of promulgating entry exams for the NYCPD which discriminate against Minorities, which are not job-related and which have not been and could not be validated;

(iii) the legality of using height requirements which are not job-related and which discriminate against Hispanics;

(iv) the appropriateness of relief to be ordered in behalf of the class.

(f) The defendants have acted or refused to act on grounds generally applicable to the class thereby making appropriate final injunctive relief or corresponding declaratory relief with respect

to the class as a whole.

PARTIES

3. Plaintiff Guardians Association is a membership organization made up of black members of the NYCPD. It is the largest such organization in the City of New York. It is devoted to the betterment of black policemen generally and has been intensely concerned for years with the recruitment of additional black patrolmen and with the promotion of black police officers within the NYCPD.

4. Plaintiff Hispanic Society is a comparable organization of Hispanic members of the NYCPD. It is the largest organization of Hispanic policemen in the City of New York. It is devoted to the betterment of Hispanic policemen generally and it too has been intensely concerned with the recruitment of additional Hispanic patrolmen and with the promotion of Hispanic police officers within the NYCPD.

5. The leaderships of these two associations have manifested their devotion to the recruitment and promotion of Minority policemen in many ways over the years. They have conducted recruiting drives aimed at recruiting young blacks and Hispanics for the NYCPD. They have conducted training programs to assist Minority policemen in taking promotional exams. They have also worked with Minority youths to assist them in completing forms and otherwise passing the rigorous applicant screening procedures. They have been active in efforts to simplify screening procedures in general and to eliminate racially biased elements in those procedures.

6. Plaintiff Felix E. Santos, an Hispanic, is a New York City police officer. Mr. Santos took and failed two entry level examinations in 1968 and 1969 before passing

examination #9080 with a score of 84 in October 1969. He was not called for the screening investigation until January, 1973 and was not appointed until March, 1974. Mr. Santos was laid off on June 30, 1975. He would now be on the force had he not been delayed in his appointment because of his failing score on the two previous examinations.

7. Plaintiff Oswaldo Perez, an Hispanic, is a probationary New York City Police Department police officer. Mr. Perez took and passed entry level examination #8108 in January 1969. He was initially rejected by the NYCPD on the grounds that he failed to meet the 5'7" height requirement. He was appointed to the force in September 1974, after the height requirement had been eliminated. Mr. Perez was laid off from work in June 1975. He would not have been laid off had he not been disqualified from appointment as a police trainee because of the height requirement when his list number was first reached in 1970.

8. Defendant Department of Personnel is the administrative agency of the City of New York whose personnel actually prepare and administer entrance examinations for the NYCPD under the direction of the Personnel Director.

9. Defendant Civil Service Commission is an independent arm of the Department of Personnel and is charged with the responsibility under §§ 6, 15, 17 and 20 of the New York Civil Service Law for prescribing rules for examinations for appointment within the NYCPD and for administering the state civil service laws in general. The responsibility for administering the civil service laws is shared with the Personnel Director, who is also the Chairman of the Commission. The Commission has promulgated Civil Service Rule 3.4.5 which provides that "the merit and fitness of applicants for positions which are classified in the competitive

class [presently including police officers] shall be ascertained by such examinations as may be prescribed" by the Personnel Director. Civil Service Rule 4.4.2 provides that tests comprising such examinations and the relative weights to be given to such tests are to be fixed by a director of examinations, "subject to the approval of the Personnal Director and the Commission." The requirement that civil service examinations test for "merit and fitness" is embodied in Article 5, § 6 of the New York State Constitution and §§ 50(1) and 52(2) of the Civil Service Law. Section 50(6) of the New York Civil Service Law provides that civil service examinations "shall be practical in their characteristics and shall relate to those matters which fairly test the relative capacity for fitness of the persons examined to discharge the duties . . ." of the position sought.

10. Defendant Alfonse D'Ambrose is the Personnel Director of the Department of Personnel and Chairman of the Civil Service Commission. As such he is the individual with the principal responsibility for the creation and administration of entrance and promotional exams for the NYCPD. His responsibilities are as set forth in the New York Civil Service Law, described above, in the Civil Service Commission Rules and in § 813 of the New York City Charter.

11. Defendant James Smith is a member of the Civil Service Commission.

12. Defendant Josephine Gambino is a member of the Civil Service Commission.

13. Defendant Michael J. Codd is Commissioner of the NYCPD. He has the ultimate responsibility for determining applicant screening procedures for the NYCPD.

14. The above individual defendants are sued in both their individual and official capacities.

15. The balance of the allegations of this complaint are made on the basis of information and belief.

FACTUAL ALLEGATIONS

Defendants' Seniority System

16. Police officers in the NYCPD are accorded seniority in order based on their date of permanent appointment. Police officers are appointed to the NYCPD primarily in the order of the score received on the entry examination. Thus the applicant with the highest score on an entry exam will be the first appointed from an eligible list; the applicant with the lowest score will be the last appointed from that list. Layoffs are made in strict inverse order of this ranking. Minority police officers are adversely affected by the discriminatory practices perpetuated by layoffs in inverse order of appointment in that said discriminatory practices have deprived said Minorities of the opportunity to accrue seniority sufficient to withstand the layoffs.

17. Layoffs and recalls are made in accordance with Sections 80 and 81 of the New York Civil Service Law. Section 80 provides that "suspension or demotion, as the case may be, among incumbents holding the same or similar positions shall be made in the inverse order of original appointments on a permanent basis . . ." Section 81(2) provides for "reinstatement to a vacancy in an appropriate position in the order of (their) original appointments."

COMPLAINT

18. Defendants' seniority layoff system has operated to discriminate unlawfully against Minorities in the following ways:

(1) Entry Level Examinations: The written entry level examinations have had a disparate adverse impact on Minorities. Minority applicants have failed or scored so low that they remain unappointed upon the expiration of an eligibility list at a rate higher than non-Minorities. Moreover, even those Minorities who eventually are appointed often receive low test scores and, as a result, are ranked proportionately lower on eligibility lists, are thus appointed later and consequently have less seniority than non-Minorities. Furthermore, Minority appointees have often taken and failed one or more entry level examinations before passing an entry examination. Upon appointment from later examinations, these Minority appointees have considerably less seniority than those non-Minorities who were appointed from the earlier examinations. These Minority appointees who have been discriminatorily denied the opportunity to accrue seniority are at a competitive disadvantage for purposes of layoffs vis-a-vis non-Minority appointees who were not so discriminated against. Thus the system of laying off police officers in inverse order of seniority adversely affects the employment status of Minority appointees and perpetuates the discriminatory effects of defendants' past unlawful testing practices.

(2) Height Requirements: Until the time of the December 1973 NYCPD entry examination, defendants maintained a discriminatory height requirement of 5'7" for appointment.

This height requirement was not related to the job and discriminated against Hispanics, who are shorter on the average than non-Minorities and blacks. Hispanics who passed the written examination prior to the 1973 examination were discriminatorily denied appointment because of the height requirement. After the height requirement was dropped, Hispanics who had previously been disqualified became eligible for appointment. However, at appointment these Hispanics were accorded lower seniority than they would have had were it not for their past discriminatory exclusion. Thus the system of layoffs in inverse order of appointment adversely affects the employment status of Hispanic appointees and perpetuates the discriminatory effects of defendants' past unlawful height requirement.

19. As a result of defendants' seniority system, Minorities have been disproportionately affected by the layoffs of police officers which began on June 30, 1975. The table below illustrates the disparate adverse impact of the layoffs on Minorities and demonstrates that Minority officers have been laid off at a rate over twice the layoff rate for whites.

	Number Before June, 1975 Layoffs	Number Laid-Off as of August, 1975	Percentage Laid-Off
White	27,220	2,664	9.8%
Black	2,488	455	18%
Hispanic	1,014	224	22%

Discriminatory Impact of
Defendants' Examinations

20. In order to become a police officer in the NYCPD one must (a) meet certain fixed requirements as to age and so on, (b) pass a written examination, (c) pass non-competitive physical and medical exams ("non-competitive" means that applicants who pass are not ranked in whole or in part according to performance on the exams), and (d) pass a screening procedure for character and fitness. The written test is promulgated and administered by the Civil Service Commission and the Personnel Director of the Department of Personnel (sometimes hereinafter collectively referred to as the "Civil Service System"). The applicant screening process is conducted by a unit of the NYCPD.

21. The men who pass the written exam are ranked on an eligible list as follows: (a) first, an "adjusted exam score" is obtained for each man by adding 5 points to the exam score of applicants who pass the exam and are military veterans and 10 points to applicants who are disabled veterans; (b) applicants with the same adjusted exam score are ranked in order of raw exam scores; and (c) applicants with the same raw and adjusted scores are ranked in order of the date of initial application, as indicated by the serial number on the application form.

22. Plaintiffs herein challenge the validity and job-relatedness of all entry level examinations of the NYCP prior to the examination administered in 1973. Plaintiffs do not at this time contest the validity of the entry level examinations administered in 1973 and

thereafter, but do not in any way concede that such examinations are non-discriminatory.

23. As of 1972 the City of New York had a population which was over 21% black and over 16% Hispanic. Less than 63% of the population of the City was white. It is widely accepted that these figures, based on 1970 census data, seriously understate the Minority population.

24. The incidence of blacks and Hispanics in the NYCPD as of 1972 is set forth in detail in the chart on the following page. As the chart shows, the NYCPD had a total force of 30,766 police officers of which number only 2,094 (6.81%) were black and 596 (1.93%) were Hispanics. Although the City as a whole had a Minority population of 37%, the NYCPD had a Minority population of only 8.75%.

25. The principal explanation for the low incidence of Minorities in the NYCPD is the racially biased character of the entry level exams promulgated by the Civil Service System.

26. The entry level exams were found to have a discriminatory impact on blacks and Hispanics in an independent study conducted by the New York City Rand Institute ("Rand"), an independent research organization. The Rand study examined entry level exam #8046, given on July 20, 1968, and exam #0013, given on May 9, 1970. The Rand study concluded that, for both exams, blacks and Hispanics scored lower than whites and failed at higher rates. The passing score for both examinations was 75. On exam #0013, 18% of whites failed, whereas 46-55% of Minorities failed, resulting in a failure rate for Minorities of almost three times the failure rate for whites; on exam #8046, 33% of whites failed,

Incidence of Minorities in the NYCPD*

Police Officers (Rank)	Blacks Number	Blacks %	Hispanics Number	Hispanics %	Total Minorities Number	Total Minorities %	Total White Number	Total White %	Total in Rank Number
Captains & Above	7	1.40	0	0	7	1.40	494	98.60	501
Lieutenants	23	2.15	5	0.47	28	2.61	1,043	97.39	1,071
Sergeants	96	3.96	17	0.70	113	4.66	2,314	95.34	2,427
Ptl. and Det.	1,935	7.30	574	2.16	2,509	9.46	24,012	90.54	26,521
Policewomen	33	13.36	0	0	33	13.36	214	86.64	247
Total Police Officers	2,094	6.81	596	1.93	2,690	8.74	28,076	91.26	30,766
Total Population NYC		21%		16%		37%		63%	

* As of February 15, 1972

while 65-70% of blacks and Hispanics failed, yielding a failure rate for Minorities almost twice as high as that for whites. The exam score distributions by deciles for both exams are set forth in the charts on the following pages. The Rand study further concluded that it was highly probable that this adverse racial impact was not confined to the examinations studied, but was a typical pattern for all NYCPD entry exams.

27. The discriminatory impact of the tests cannot be excused or explained by arguing that the tests themselves are rationally designed or job related or that they are demonstrably valid indicators of probable performance on the job being tested for.

28. The entry level examinations place a premium on reading skills, verbal analysis and familiarity with written test taking in general. There is no rational basis for placing such a premium on these skills since the principal characteristics necessary for a good police officer are judgment and insight into personal behavior - including Minority behavior - rather than pencil and paper skills. While a minimum level of such skills may be necessary for a good police officer, it is irrational and improper to place as much emphasis on these areas as there is in the present entry exams. That this emphasis is racially biased is obvious since persons from Minority backgrounds are apt to have received inferior formal educations and are apt to have had less experience in situations requiring verbal and test taking skills.

29. The entry level exams are particularly illogical - and biased - in dealing with Hispanics whose primary language is Spanish. While there is a certain level of English comprehension which is essential for the

18a
COMPLAINT

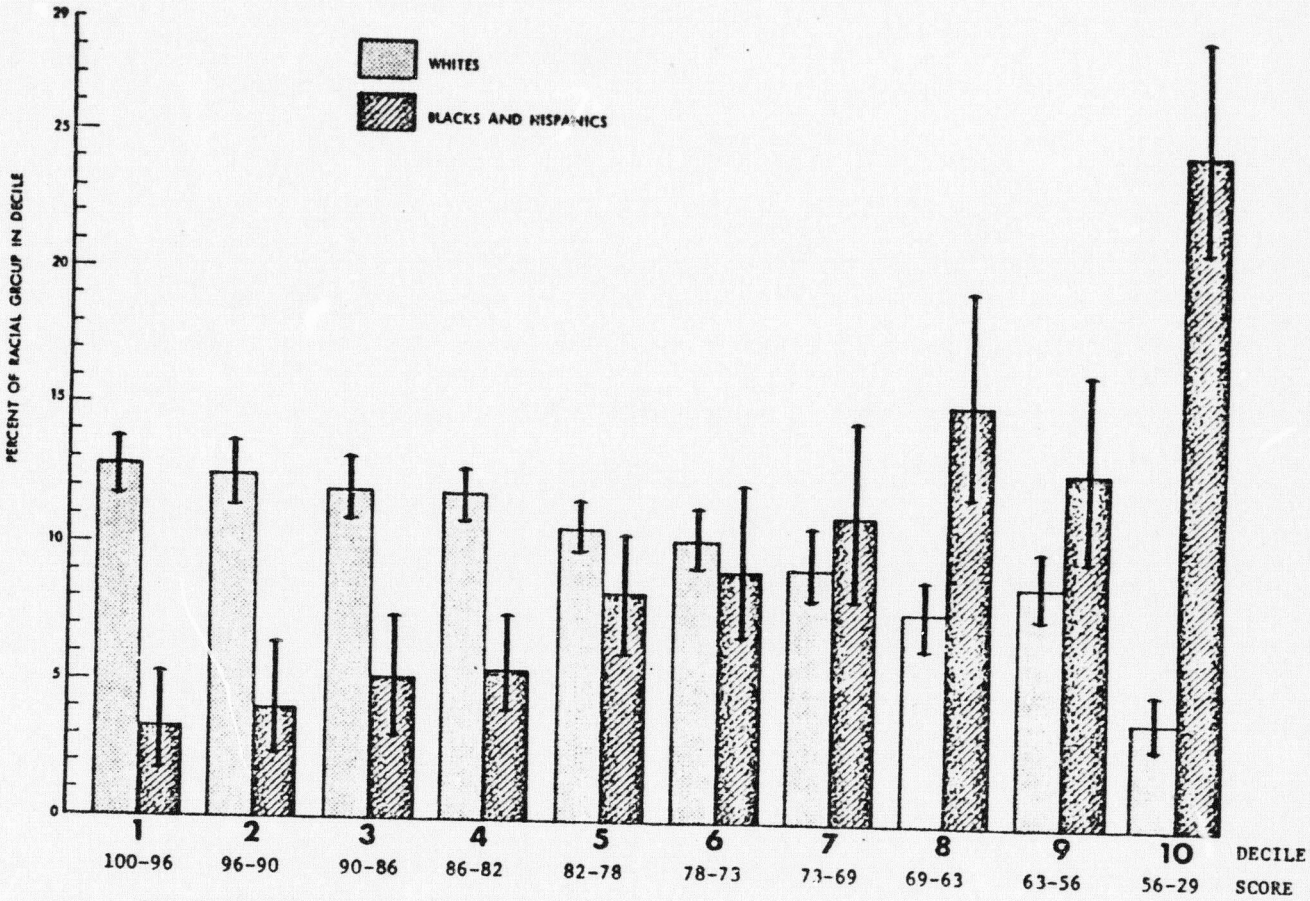

Fig. 4--Estimated exam score distributions and 95% confidence intervals for exam #8046

19a
COMPLAINT

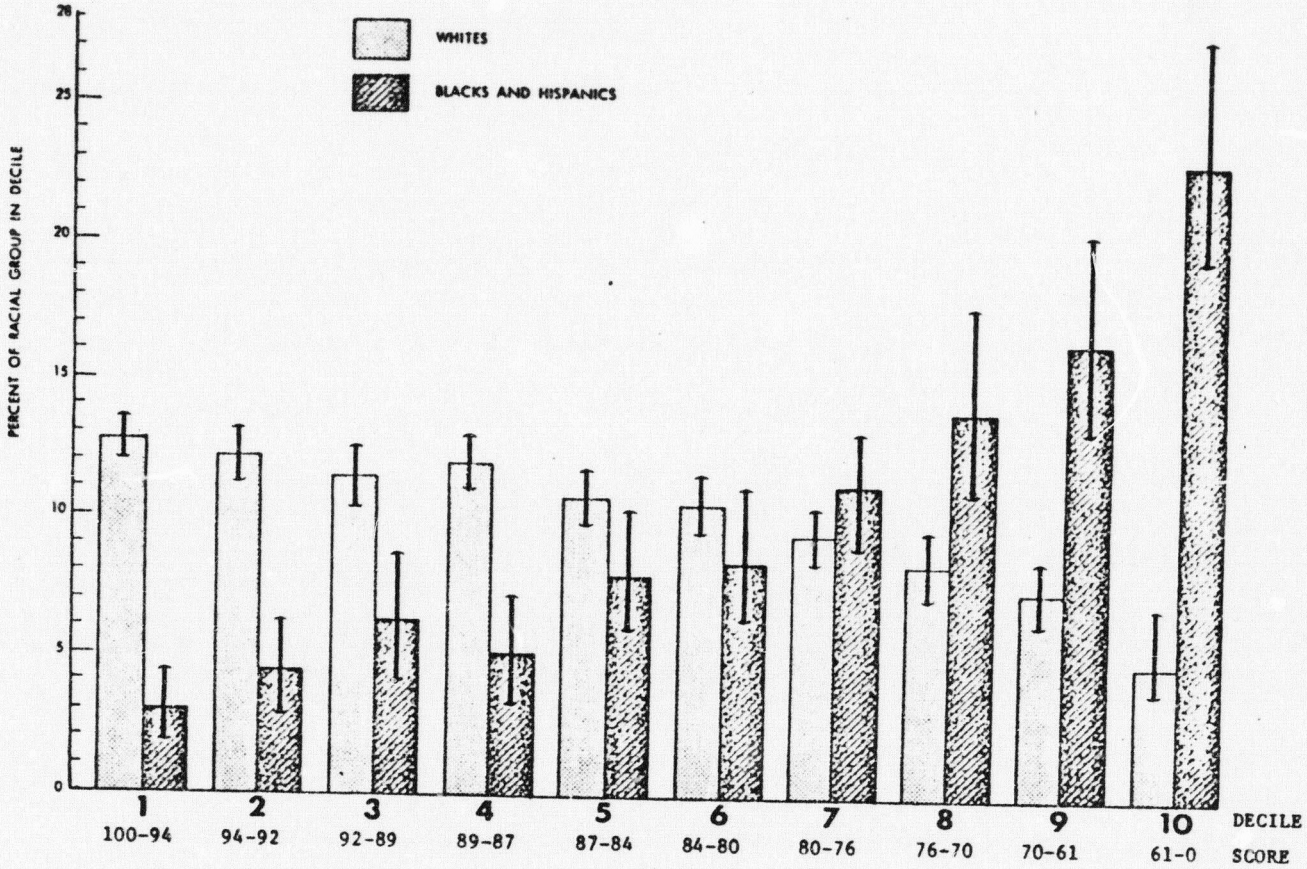

Fig. 3—Estimated exam score distributions and 95% confidence intervals for exam #0013

position of police officer, there is no rational basis for requiring that the competitive portion of the entry examination be in English rather than in Spanish. In view of the fact that some 16% of the population of the City of New York is Hispanic and in view of the fact that there is a high incidence of crime in predominantly Hispanic, as in black, precincts, a rational testing procedure would put a premium on the ability to speak and write Spanish rather than discriminating against persons whose primary language is Spanish by promulgating only English language examinations.

30. The questions on the entry exams do not relate to rational job descriptions and they do not draw on a body of material, the mastery of which would promote effectiveness in the positions tested for. The questions are not written by police experts or by testing experts, but by generally untrained individuals in the Department of Personnel.

31. Under standard Civil Service System procedure, the questions are not reviewed by anyone with direct knowledge of the requirements of the positions tested for - e.g., superior officers in the NYCPD - until after the exams are given. The post-exam review is intended merely to weed out the clearly erroneous "right answers" and the occasional nonsensical question. Thus, there is no effort to have the exams reviewed by police experts for content validity and job relatedness.

32. The entry level has not been and could not be shown to have "predictive validity." That is, there is no correlation between performance on the exams and performance on the job being tested for.

33. The Civil Service System tests do not include the candidates' ability to do the job tested for. There is no evidence that they measure merit or fitness. They have not been rationally designed and they have not been validated. They systematically discriminate against Minorities and cannot be shown to have any relation to job performance.

Height Requirement

34. Until 1973 defendants maintained a 5'7" height requirement for positions of patrolmen in the NYCPD. Prior to 1969 the height requirement was 5'8", before that the requirement was 5'9". There is no demonstrable link between the height of a police officer and his ability to satisfactorily perform the tasks required by the job. The maintenance of these height requirements has had a discriminatory impact on Hispanics.

35. The mean height for Hispanic males in the New York metropolitan area is 66.8 inches, or slightly less than 5'7". Thus, over 50% of all Hispanic males were prohibited from entering the NYCPD by the maintenance of the 5'7" height requirement. The impact of the earlier height requirements of 5'8" and 5'9" was even greater - 75.2% of all Hispanics are 5'8" or less and 84.5% are 5'9" or less.

36. The mean height for non-Hispanic whites and blacks is 69.4" and 69.1", respectively, or over 5'9".

37. Defendants' height requirement of 5'7" excluded from employment 54.1% Hispanics in contrast to 19.1% of non-Hispanic whites and 22.1% of blacks. As a result of this height requirement, approximately 2.5 times

as many Hispanics as blacks and whites were eliminated from consideration for positions as patrolmen.

38. Plaintiff and members of the class have been, are, and will continue to be irreparably injured by the unlawful practices of defendants, and have no adequate remedy at law.

VIOLATIONS OF LAW

39. As a result of the discriminatory employment practices set forth in allegations 16 through 38 hereof, plaintiffs and the class which they represent have been denied equal employment opportunities in the NYCPD in derogation of their rights under the Fourteenth Amendment to the United States Constitution, under Title 42 U.S.C. §§ 1981 and 1983, under Title 42 U.S.C. §§ 2000e-2, et seq., under Article 5, § 6 of the New York Constitution and under §§ 50 and 52 of the New York Civil Service Law.

WHEREFORE, plaintiffs respectfully pray:

(a) that this Court declare that layoffs and recalls based on date of appointment resulting from performance on the challenged entry level examinations, i.e., all examinations prior to the 1973 examination, are in violation of Title 42 U.S.C. §§ 1981, 1983 and 2000e et seq. and the Fourteenth Amendment of the Constitution of the United States and, under the doctrine of pendent jurisdiction, declare the same in violation of §§ 50(6) and 52(2) of the New York Civil Service Law and of

Article 5, § 6 of the New York State Constitution;

(b) that defendants Civil Service Commission, Department of Personnel and Personnel Director of the Department of Personnel, and their successors, be preliminarily and permanently restrained and enjoined from making use of performance on any test as a criteria for layoff or recall within the NYCPD which has not been prepared and validated in accordance with sound standards of professional psychological testing as accurately measuring the merit and fitness of candidates to perform the tasks of the position for which the test is being administered;

(c) that the New York City Police Department be preliminarily and permanently restrained and enjoined from using any eligibility list from any challenged examination for layoff or recall within the Department;

(d) that this Court order defendants to re-order the seniority of Minority Police Officers to compensate them for defendants' acts of discrimination;

(e) that this Court award plaintiffs "front" and "back" pay to compensate them for defendants' acts of discrimination;

(f) that this Court retain jurisdiction in the action until such time as defendants comply with the constitutions and statutes cited herein;

(g) that this Court award plaintiffs their reasonable costs including attorneys' fees; and

(h) that this Court grant such other and further relief as may be proper.

Dated: April , 1976
New York, New York

Respectfully submitted,

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Attorneys for Plaintiffs

ORDER TO SHOW CAUSE FOR A PRELIMINARY INJUNCTION AND A TRO

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

THE GUARDIANS ASSOCIATION OF THE NEW YORK CITY POLICE DEPARTMENT, INC., THE HISPANIC SOCIETY OF THE NEW YORK CITY POLICE DEPARTMENT, INC., OSWALDO PEREZ and FELIX E. SANTOS, Plaintiffs, - against - CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK, DEPARTMENT OF PERSONNEL OF THE CITY OF NEW YORK, THE NEW YORK CITY POLICE DEPARTMENT, ALFONSE D'AMBROSE, individually and in his capacity as Chairman of the Civil Service Commission of the City of New York and Personnel Director of the City of New York, JAMES SMITH and JOSEPHINE GAMBINO, individually and in their capacity as members of the Civil Service Commission of the City of New York, and MICHAEL J. CODD, individually and in his capacity as Commissioner of the New York City Police Department, Defendants.	Civil Action No. ORDER TO SHOW CAUSE FOR A PRELIMINARY INJUNCTION AND A TEMPORARY RESTRAINING ORDER

Upon the verified complaint filed herein and the annexed affidavits of Christopher Crowley, Sara E. Steinbock, Richard Barrett, Oswaldo Perez, and Felix E. Santos, it is

ORDERED, that the defendants show cause before the Honorable at the United States Court House, Foley Square, New York, New York, in Room on May , 1976 at M. or as soon thereafter as counsel can be heard, why an order should not be made pursuant to Rule 65 of the Federal Rules of Civil Procedure for a Preliminary Injunction (1) restraining and enjoining

defendants and their successors from laying off or recalling any police officer in the New York City Police Department ("NYCPD") until the NYCPD seniority lists are reordered to accord plaintiffs the seniority they would have had but for defendants' acts of discrimination, i.e., by according plaintiffs constructive seniority as of the median appointment date from the first entry examination which they took;* (2) ordering that those police officers who would not be on layoff were it not for defendants' discriminatory practices be awarded "front pay", i.e., pay for the interim period between the time the Court orders that the seniority lists be restructured and such time as plaintiffs actually return to work; (3) directing such other relief as the Court shall deem just and equitable.

It appearing to the Court that defendants are about to act in violation of plaintiffs' rights respecting the subject of this action by recalling laid-off policemen from seniority lists challenged by plaintiffs as discriminatory in that they perpetuate defendants' past discriminatory employment practices and that such action would tend to render a judgment ineffectual in that positions about to become available will already be filled, and it appearing that plaintiffs will suffer immediate and irreparable injury unless defendants are restrained

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* Seniority relief sought by plaintiffs herein has been approved by the Supreme Court in Franks v. Bowman Transportation Co., 44 U.S.L.W. 4355 (March 24, 1976), and by the Second Circuit Court of Appeals in Acha v. Beame (Docket No. 75-7388, February 19, 1976), and in Chance v. Board of Examiners (Docket Nos. 75-7161, 75-7165, January 19, 1976).

ORDER TO SHOW CAUSE FOR A
PRELIMINARY INJUNCTION AND
A TRO.

before a hearing can be had in that plaintiffs will have lost the opportunity to be recalled and in that their unemployment benefits have ceased or are about to cease and they will be unable to support themselves and their families and it appearing that counsel for plaintiffs has made reasonable efforts to notify defendants and their counsel of this application, it is

ORDERED, that defendants, their officers, employees and successors be and are hereby restrained from laying off or recalling any police officers; and it is further

ORDERED, that this order expire within days after entry unless within such time the order for good cause shown is extended for a longer period; and it is further

ORDERED, that pursuant to Federal Rules of Civil Procedure 33 and 34, defendants comply with plaintiffs' interrogatories and request to produce documents filed this date and attached as Exhibit U hereto on or before in order that all relevant facts be obtained prior to a hearing on this motion; and it is further

ORDERED, that pursuant to Federal Rules of Civil Procedure 16 all parties be directed to attend a conference in Room on May , 1976, at M. for the purpose of insuring that all facts relevant to this motion have been obtained and for such other matters as may aid in the disposition of this action; and it is further

ORDERED, that, because plaintiffs are persons of modest means and do not have sufficient assets to be

ORDER TO SHOW CAUSE FOR A PRELIMINARY INJUNCTION AND A TRO.

able to purchase a bond of any significant amount, the requirement that they post security is waived; and it is further

ORDERED, that personal service of a copy of this order and of the papers on which it is granted on the Corporation Counsel of the City of New York, attorney for defendants, on or before May , 1976 at M. be deemed sufficient service.

Dated: New York, New York
May , 1976

United States District Judge

AFFIDAVIT OF CHRISTOPHER CROWLEY READ IN SUPPORT OF ORDER TO SHOW CAUSE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

THE GUARDIANS ASSOCIATION OF THE NEW YORK CITY POLICE DEPARTMENT, INC., THE HISPANIC SOCIETY OF THE NEW YORK CITY POLICE DEPARTMENT, INC., OSWALDO PEREZ, and FELIX E. SANTOS, individually and on behalf of all others similarly situated,	Civil Action No. 76 Civ. 1982 (R.L.C.)
Plaintiffs,	
-against-	
CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK, DEPARTMENT OF PERSONNEL OF THE CITY OF NEW YORK, THE NEW YORK CITY POLICE DEPARTMENT, ALFONSE D'AMBROSE, individually and in his capacity as Chairman of the Civil Service Commission of the City of New York and Personnel Director of the City of New York, JAMES SMITH and JOSEPHINE GAMBINO, individually and in their capacity as members of the Civil Service Commission of the City of New York, and MICHAEL J. CODD, individually and in his capacity as Commissioner of the New York City Police Department,	AFFIDAVIT IN SUPPORT OF PLAINTIFFS' APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION
Defendants.	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

CHRISTOPHER CROWLEY, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and co-counsel for the plaintiffs herein. I am fully familiar with the facts and circumstances of this case. I submit this affidavit in support of plaintiffs' motion for a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure.

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2. Plaintiffs in this action consist of black and Hispanic* police officers (hereinafter collectively referred to as "Minorities") who have been or are now laid off or whose seniority is lower than it would otherwise be but for the discriminatory practices of defendants. These practices include, inter alia, the use of discriminatory entry level examinations and the maintenance of a discriminatory height requirement.

3. The defendants are the Civil Service Commission of the City of New York, the Department of Personnel of the City of New York, the New York City Police Department (hereinafter "NYCPD") and their individual commissioners. These defendants are charged with establishing and administering the employment practices challenged herein.

4. Police officers in the NYCPD are accorded seniority based on their date of permanent appointment. Applicants are appointed to the NYCPD primarily in the order of their score on the entry level examination -- those with the highest scores are appointed first, those with the lowest scores are appointed last. Layoffs are made in strict inverse order of the date of permanent appointment. The NYCPD entry examinations which determine order of appointment have been shown to have a discriminatory impact on Minorities. This suit challenges defendants' seniority layoff system as adversely affecting Minority police officers by perpetuating defendants' past unlawful employment practices and by depriving said Minorities of the opportunity to accrue seniority sufficient to withstand the layoffs.

5. Plaintiffs challenge the use of performance on all NYCPD entry level exams prior to the 1973 exam to deter-

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* As used herein, the term "Hispanic" means persons with Spanish surnames or persons who were born or who are descended from persons who were born in Puerto Rico or Caribbean or South American countries.

mine seniority in the NYCPD. Plaintiffs do not at this time challenge the 1973 entry level examination, but do not in any way concede that the 1973 entry examination or those administered thereafter are non-discriminatory. As this affidavit shows, the challenged entry level examinations promulgated by defendants are not job-related and have discriminated sharply against black and Hispanic applicants and denied them the opportunity to compete for positions in the NYCPD on an equal basis with whites. Similarly, the height requirement maintained by defendants until 1973 discriminated against Hispanics without any validated basis.

6. This motion for injunctive relief seeks to compensate patrolmen who have suffered the effect of defendants' past discriminatory practices by forcing defendants to restructure the existing seniority system to accord plaintiffs the seniority status they would have had but for defendants' past discriminatory practices, i.e., by according plaintiffs contructive seniority as of the median appointment date from the first entry examination which they took and by awarding plaintiffs monetary relief, including "front" pay, i.e., pay for the interim period between the time the Court orders that plaintiffs be accorded their rightful seniority and such time as plaintiffs actually return to work.

7. This action is brought under the federal civil rights laws, 42 U.S.C. §§ 1981, 1983 and 2000e et seq., which prohibit the denial of equal employment opportunity on the basis of race, color or national origin and Article 5, § 6 of the New York State Constitution and §§ 50(6) and 52(2) of the New York Civil Service Law providing that civil service appointments and promotions be made according to

AFFIDAVIT OF CHRISTOPHER CROWLEY READ
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merit and fitness as determined by job-related examinations. Plaintiffs Hispanic Society and Oswaldo Perez have filed timely charges with the EEOC and have received notice from the Justice Department of their right to initiate this action under 42 U.S.C. § 2000e-5(f). A copy of this "right to sue" letter is attached as Exhibit A hereto.

8. The preliminary injunction is being sought on the grounds that defendants' seniority system has an adverse impact on Minority police officers in that it perpetuates defendants' past discriminatry acts and denies Minorities the opportunity, equal to non-Minorities, to accrue seniority sufficient to withstand the layoffs. Plaintiffs seek to e[illegible]n defendants from recalling police officers from seniority lists challenged by plaintiffs as discriminatory in that they perpetuate defendants' past discriminatory employment practices. Injunctive relief is essential in this case because defendants are about to recall a significant number of police officers from the current seniority lists. Unless defendants are enjoined from making recalls from these lists and are ordered to restructure the seniority lists to accord plaintiffs the seniority they would have had but for defendants' discriminatory practices, plaintiffs will suffer irreparable injury in that the positions will be filled and plaintiffs, whose employment benefits have ceased or are about to cease, will be unable to support themselves and their families.

THE GUARDIANS ASSOCIATION
v. CIVIL SERVICE COMMISSION

9. In March 1972 a lawsuit entitled The Guar-

dians Association v. Civil Service Commission, 72 Civ. 928 (S.J.R.) (hereinafter "Guardians I") was filed, challenging, inter alia, the entry level examinations challenged herein. The height requirement was not raised in Guardians I.

10. At the time Guardians I was commenced, New York City was neither hiring new policemen nor planning any new examinations. Because there appeared to be no urgency, it was agreed by the parties that the City hire an impartial third party, the New York City Rand Institute ("Rand"), to conduct a survey of two recent entry level examinations to determine their racial impact. Plaintiffs agreed not to seek injunctive relief while the Rand study was being made and the job freeze remained in effect. In January 1973, the job freeze was lifted and the City resumed hiring policemen from the eligibility lists. At about the same time, the City announced plans for a new patrolmen's examination, to be given before January 1, 1974.

11. Late in March 1973, plaintiffs moved before Judge Sylvester J. Ryan for a preliminary injunction against continued appointments from the current eligibility lists and against the use of inadequate methods to prepare any further examinations. Before the decision, the Rand Study was completed and the findings were submitted to the District Court. The report, entitled "Police Civil Service Selection Procedures in New York City: Comparison of Ethnic Groups", (hereinafter "Rand Report"), supported plaintiffs' contention that the entry examinations had had a racially disproportionate impact. At that time, plaintiffs also sub-

mitted affidavits and other information showing that the past examinations were not job-related and that the new one might not cure the defects.

12. On July 16, 1973, Judge Ryan denied the motion for a preliminary injunction in a short opinion. He assumed that plaintiffs had made the prima facie showing of discrimination based on examination scores alone which placed the burden of establishing the job-relatedness of the challenged examinations on defendants. Judge Ryan denied the motion, however, on the ground that the existing lists based on the challenged examinations were soon to be exhausted (Endorsement of July 12, 1973 attached as Exhibit B hereto).

13. Plaintiffs made an expedited appeal from Judge Ryan's decision. The Second Circuit (Friendly, J.) affirmed the order of the District Court on the ground that the lists from the examinations complained of were about to be exhausted. Guardians Association v. Civil Service Commission, 490 F.2d 400, 404 (2d Cir. 1973) (Attached as Exhibit C hereto).

14. Because the lists from the challenged examinations were in fact soon exhausted and defendants announced a new patrolmen's examination to be given that year, plaintiffs did not pursue the action further at that time. The wave of layoffs and anticipated recalls has, however, indicated the necessity for a final determination that the challenged examinations are discriminatory and that a seniority system based on those lists is improper and illegal.

AFFIDAVIT OF CHRISTOPHER CROWLEY READ
IN SUPPORT OF ORDER TO SHOW CAUSE

15. On March 24, 1976 plaintiffs attempted to move for expedited discovery before Judge Ryan, in order to determine the impact of the layoffs on Minority police officers. (See Order to Show Cause and Motion for Expedited Discovery, attached hereto as Exhibit D). Plaintiffs were told by Judge Ryan at that time that the case had been closed. (See Exhibit E hereto). Plaintiffs took the position that the action was not closed. (See letter of March 29, 1976 form Kenneth Kimerling, Esq. to Judge Ryan, attached hereto as Exhibit F). However, in light of the irreparable injury to plaintiffs and the urgent need for relief, plaintiffs decided it was necessary to proceed with a new action. (See letter of April 8, 1976 from Christopher Crowley, Esq. to Judge Ryan, attached hereto as Exhibit G). Plaintiffs have incorporated the relevant discovery and affidavits submitted on Guardians I into this affidavit.

LAYOFFS AND RECALL OF
POLICE OFFICERS IN THE NYCPD

Defendants' Seniority System

16. Police officers are ranked in order based upon their date of permanent appointment, which is primarily based upon their entry level examination score. Layoffs are made according to this ranking. Layoffs and recalls are made in accordance with Sections 80 and 81 of the New York Civil Service Law. Section 80 provides that "suspension or demotion, as the case may be, among incumbents holding the same or similar positions shall be made in the inverse order of original appointments on a permanent basis.

AFFIDAVIT OF CHRISTOPHER CROWLEY READ
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17. Defendants' seniority layoff system has operated to discriminate against Minority police officers in the following ways:

(a) Entry Level Examinations: The written entry level examinations have had a discriminatory impact upon Minorities. Minority applicants have failed or received low scores on these discriminatory exams. As a result they have failed to receive appointments before the expiration of the eligibility list based on a particular exam at a rate higher than non-Minorities. Those Minorities who eventually were appointed often received low test scores and, as a result, were ranked proportionately lower on eligibility lists and were therefore accorded lower seniority than non-Minorities. Minority appointees have often taken and failed - or received low scores on - one or more entry level examinations before passing an entry examination and receiving an appointment. Upon appointment from later examinations, these Minority appointees have considerably less seniority than those non-Minorities who were appointed from the earlier discriminatory examinations. Thus the seniority system perpetuates defendants' past discriminatory testing practices. Minority appointees who have been discriminatorily denied the opportunity to accrue seniority are at a competitive disadvantage for purposes of lay-offs compared to non-Minorities who were not so discriminated against.

(b) Height Requirements: Until the December 1973 examination for New York City police officers, defendants maintained a discriminatory height requirement of 5'7" for appointment. This height requirement was not related to the job and discriminated against Hispanics, who are shorter on the average than non-Minorities and blacks. Hispanics who

passed the written examination prior to the 1973 examination were discriminatorily denied appointment because of the height requirement. After the height requirement was eliminated, Hispanics who had previously been disqualified became eligible for appointment. However, at appointment these Hispanics were accorded lower seniority than they would have had were it not for the past discriminatory disqualifications. Thus the seniority system perpetuates defendants' past illegal height requirement.

Impact of Layoffs on
Minority Police Officers

18. As a result of defendants' seniority system, Minorities have been disproportionately affected by the layoffs of police officers which began on June 30, 1975. The table below illustrates the disparate adverse impact of the layoffs on Minorities and demonstrates that Minority officers have been laid off at a rate over twice the layoff rate for whites.

	Number Before June, 1975 Layoffs	Number Laid off as of August, 1975	Percentage Laid Off
White	27,220	2,664	9.8%
Black	2,488	455	18%
Hispanic	1,014	224	22%

The two charts on the following pages, dated April 3, 1975 - before the layoffs began - and August 28, 1975 - after the initial layoffs - indicate the disproportionate impact of the layoffs on Minority Police officers.

Plaintiffs are entitled
to Constructive Seniority

19. Once employment discrimination has been

AFFIDAVIT OF CHRISTOPHER CROWLEY READ IN SUPPORT OF ORDER TO SHOW CAUSE

PARTICIPATION OF TOTAL UNIFORMED PERSONNEL
IN NEW YORK CITY POLICE DEPARTMENT
BY RACE AND SEX

AS OF DATE: 4/3/75

Prepared by the Equal Opportunity Unit

RANKS		TOTAL IN RANK	MALE: TOTAL MALE IN RANK	MALE: WHITE	MALE: BLACK	MALE: HISPANIC	FEMALE: TOTAL FEMALE IN RANK	FEMALE: WHITE	FEMALE: BLACK	FEMALE: HISPANIC
Chief of Oper.	#	1	1	1						
	%	100	100	100						
Bureau	#	5	5	4	1					
Chiefs	%	100	100	80.0	20.0					
Assist.	#	15	15	14		1				
Chief	%	100	100	93.3		6.7				
Deputy	#	23	23	22	1					
Chief	%	100	100	95.7	4.3					
Inspector	#	43	42	40	2		1	1		
	%	100	97.7	93.0	4.7		2.3	2.3		
Dep.	#	102	102	99	3					
Inspector	%	100	100	97.1	2.9					
Captain	#	358	357	354	2	1	1	1		
	%	100	99.7	98.9	0.5	0.3	0.3	0.3		
Lt. Dir.	#	1	1	1						
Legal Bur.	%	100	100	100						
Lt. Sp.	#	15	15	14	1					
Assign.	%	100	100	93.3	6.7					
Lt. Co.	#	57	57	54	2	1				
Det. Sq.	%	100	100	94.7	3.5	1.8				
Lieutenant	#	985	980	948	25	7	5	5		
	%	100	99.5	96.3	2.5	0.7	0.5	0.5		
Sgt.Special	#	23	23	21	2					
Assign.	%	100	100	91.3	8.7					
Sgt. Sup.	#	89	89	82	5	2				
Det. Sq.	%	100	100	92.1	5.6	2.3				
Sergeant	#	2,731	2,716	2,585	90	41	15	14	1	
	%	100	99.4	94.6	3.3	1.5	0.6	0.5	0.1	
Detective	#	131	128	110	14	4	3	2	1	
First	%	100	97.7	84.0	10.7	3.0	2.3	1.5	0.7	
Detective	#	581	574	487	65	22	7	6	1	
Secon.	%	100	98.8	83.8	11.2	3.8	1.2	1.0	0.2	
Detective	#	2,946	2,895	2,449	313	133	51	39	12	
Third & Sp.	%	100	98.3	83.2	10.6	4.5	1.7	1.3	0.4	
Police Officer	#	35	35	33	1	1				
Sp. Assign.	%	100	100	94.2	2.9	2.9				
Police	#	22,581	21,942	19,369	1,787	786	639	465	159	15
Officer	%	100	97.2	85.8	7.9	3.5	2.8	2.0	0.7	0.1
TOTAL	#	30,722	30,000	26,687	2,314	999	722	533	174	15
	%	100	97.6	86.9	7.5	3.2	2.4	1.7	0.6	0.1

TOTALS - MALE AND FEMALE

WHITE	BLACK	HISPANIC	TOTAL
27,220	2,488	1,014	30,722
88.6%	8.1%	3.3%	100%

AFFIDAVIT OF CHRISTOPHER CROWLEY READ IN SUPPORT OF ORDER TO SHOW CAUSE

PARTICIPATION OF TOTAL UNIFORMED PERSONNEL
IN NEW YORK CITY POLICE DEPARTMENT
BY RACE AND SEX

As of
Date: 8-28

Prepared by the Equal Opportunity Unit

RANKS		MALE TOTAL IN RANK	MALE TOTAL MALE IN RANK	MALE WHITE	MALE BLACK	MALE HISPANIC	MALE ASIAN AMERICAN	MALE AMERICAN INDIAN	MALE OTHER	FEMALE TOTAL FEMALE IN RANK	FEMALE WHITE	FEMALE BLACK	FEMALE HISPANIC	FEMALE ASIAN AMERICAN	FEMALE AMERICAN INDIAN
All Captains and Above	#	529	527	516	9	2				2	2				
	%	100	99.6	97.5	1.7	0.4				0.4	0.4				
Chief of Operation	#	1	1	1											
	%	100	100	100											
Bureau Chiefs	#	5	5	4	1										
	%	100	100	80	20										
Assistant Chief	#	14	14	13		1									
	%	100	100	92.3		7.1									
Deputy Chief	#	23	23	22	1										
	%	100	100	95.7	4.3										
Inspector	#	42	41	38	3										
	%	100	97.6	90.5	7.1					1	1				
Deputy Inspector	#	58	58	56	2					2.4	2.4				
	%	100	100	98.0	2.0										
Captain	#	346	345	342	2	1				1	1				
	%	100	99.7	98.8	0.6	0.3				0.3	0.3				
All Lieutenants	#	1,038	1,033	998	27	8				5	5				
	%	100	99.5	96.1	2.6	0.8				0.5	0.5				
Lt. Jr. Legal B.	#	1	1	1											
	%	100	100	100											
Lt. Sp. Assign.	#	16	16	16											
	%	100	100	100											
Lt. Det. Sqd.	#	56	56	53	2	1									
	%	100	100	94.6	3.6	1.8									
Lieutenant	#	965	960	928	25	7				5	5				
	%	100	99.5	96.2	2.6	0.7				0.5	0.5				
All Sergeants	#	2,833	2,817	2,679	95	43				16	15	1			
	%	100	99.4	94.6	3.3	1.5				0.6	0.5	0.04			
Sgt. Sp. Assign.	#	24	24	22	2										
	%	100	100	91.7	8.3										
Sgt. Supv. Det. Sqd.	#	83	83	77	4	2*									
		100	100	92.8	4.8	2.4									
Sergeant	#	2,726	2,710	2,580	89	41				16	15	1			
	%	100	99.41	94.65	3.26	1.50				0.59	0.55	0.04			
All Pol. Off. & All Det.	#	22,995	22,704	20,117	1,837	734	6	8	2	291	224	64	3		
	%	100	98.7	87.4	8.0	3.2	0.03	0.05	0.03	1.3	1.0	0.28	.01		
Det. First Det.	#	124	121	106	12	3				3	2	1			
	%	100	97.58	85.48	9.68	2.42				2.42	1.61	0.18			
Second Det.	#	556	548	469	58	21				8	7	1			
	%	100	98.56	84.35	10.43	3.78				1.44	1.26	0.18			
Third & Sp.	#	2,917	2,866	2,420	310	134		1	1	51	39	12			
	%	100	98.25	82.89	10.63	4.59		0.10	0.03	1.75	1.34	0.41			
Police Off. Sp. Assign.	#	35	35	33	1	1									
	%	100	100	94.2	2.9	2.9									
Police Officer	#	19,363	19,134	17,089	1,456	575	6	7	1	229	176	50	3		
	%	100	98.81	88.22	7.52	2.97	0.03	0.04	0.03	1.18	0.91	0.26	0.02		
Total	#	27,395	27,081	24,310	1,960	787	6	8	2	314	246	65	3		
	%	100	98.85	88.71	7.18	2.87	0.02	0.04	0.03	1.115	0.90	0.24	0.01		

TOTALS - MALE & FEMALE

WHITE	BLACK	HISPANIC	ASIAN AMER.	AMER. INDIAN	OTHER	TOTAL
24,556	2,033	790	6	8	2	27,39
89.64%	7.42%	2.88%	0.02	0.03%	0.01%	100.00%

shown, employees who suffered such discrimination are entitled to the seniority they would have had but for the employer's discriminatory acts. A number of important recent decisions have clearly recognized the right of victims of employment discrimination to their rightful seniority status and have endorsed the appropriateness of the type of relief sought herein, i.e., constructive seniority as of the median appointment date of the first entry exam taken. See Second Circuit opinion in Chance v. Board of Examiners (Docket Nos. 75-7161, 75-7164, January 19, 1976) discussed below.

20. In Franks v. Bowman, 44 U.S.L.W. 4355 (March 24, 1976) the Supreme Court held that employees who had suffered discrimination in violation of Title VII of the Civil Rights Act of 1964 in applying for positions as over-the-road truck drivers were entitled to seniority retroactive to the date of application. Applicants who suffered discrimination but were never hired were held to be entitled to be hired and receive backpay as well as retroactive seniority. The Court deemed these remedies necessary in order to make plaintiffs whole for the injuries suffered as a result of the employer's unlawful discrimination.

> ". . . . federal courts are empowered to fashion such relief as the particular circumstances of a case may require to effect restitution, making whole insofar as possible the victims of racial discrimination in hiring. Adequate relief may well be denied in the absence of a seniority remedy slotting the victim in that position in the seniority system that would have been his had he been hired at the time of his application. It can hardly be questioned that ordinarily such relief will be necessary to achieve the "make whole" purposes of the Act. Id. at 4361.

21. The Second Circuit Court of Appeals has addressed the same issue raised in this case in Acha v. Beame (Docket No. 75-7388, February 19, 1976). There, women police officers complained of the discriminatory hiring

practices of defendants herein which restricted their ability to be appointed to the New York City Police Department. In 1973, the Department revised its policy and allowed women to compete equally with men for police jobs However, as with Minorities, the effects of the past discrimination were perpetuated on those hired after 1973. Because of their low seniority these women police officers were among the first laid-off in June, 1975. The Court of Appeals remanded the case to the District Court (Duffy, J.) to reorder the seniority lists to accord policewomen seniority from the date they would have been appointed but for defendants' discrimination and to determine who among the women police officers would have been hired early enough to accumulate sufficient seniority to withstand the layoffs were it not for defendants' discrimination.

22. The Court of Appeals in Acha relied heavily on another recent Second Circuit opinion, Chance v. Board of Examiners, (Docket Nos. 75-7161, 75-7164, January 19, 1976) (Chance IV). Chance involved discrimination in examinations for supervisory positions in the New York City school system. After successfully obtaining relief, many Minorities were appointed to positions. That relief was eviscerated, however, by the layoffs (or "excessing") of personnel. Although the Second Circuit reversed an order requiring that personnel be excessed in proportion to the racial and ethnic make-up of the persons holding supervisory positions, it did recommend a settlement which would "accord constructive seniority to any minority supervisor who failed an examination since invalidated as discriminatory by giving him a date of appointment which is the mean appointment date of those who passed the examination" (Slip Op. at 6597).

> "If a minority worker has been kept from his rightful place on the seniority list by

his inability to pass a discriminatory examination, he may, in some instances, be entitled to preferential treatment--not because he is Black, but because, and only to the extent that, he has been discriminated against. The 'freedom now' and 'rightful place' doctrines create constructive or fictional seniority to put minority employeees in the approximate spot on the seniorty list that they would have occupied had they not been the subject of discrimination." Id. at 6596.

DISCRIMINATORY IMPACT OF
DEFENDANTS' EXAMINATIONS

Application Process

23. In order to be appointed to the NYCPD an applicant must (a) file a brief application, (b) pass a written examination, (c) pass a physical and medical examination, (d) submit a detailed form for a background investigation, and (e) pass a screening process to determine character and fitness.

24. Once these steps have been successfully completed, the order of appointment is determined almost solely by the raw score on the written examination. The order is adjusted, however, in three ways: (a) the raw examination score is raised by five points for veterans and ten points for disabled veterans; (b) applicants with the same adjusted exam score are ranked in order of raw exam score; (c) applicants with the same raw examination score are ranked in order of the date the initial application was filed as determined by the serial number on the application form.

Rand Report

25. Defendants' examinations were found to have a discriminatory impact on blacks and Hispanics by the Rand study, conducted in connection with Guardians I. The Rand report, a copy of which is attached hereto as Exhibit H, examined the results of two entry level examinations -- exam #8046, given on July 20, 1968 and exam #0013, given on May 9, 1970 -- and concluded that the examinations dis-

criminated sharply against blacks and Hispanics, not only in that whites passed at significantly higher rates than blacks, but also in that blacks and Hispanics who did pass tend to score much lower than whites. Rand Report pp. 3-4.

26. The Rand Report identified race and ethnicity of those who took the examinations in five ways: (a) data was supplied by the NYCPD for all those persons who filed forms for the investigation process; (b) a questionnaire which inquired into race and ethnicity was mailed to all persons who took the examination; (c) an Hispanic surname identification was used, based on a United States Census Bureau list of Hispanic names; (d) race and ethnicity were identified by data from census tracts in New York City based on residence; (e) those who took the exams were questioned regarding their race and ethnicity in a telephone survey.

27. Using the racial and ethnic data separately and in conjunction with each other, the Rand Report analyzed the passing rates for whites, blacks and Hispanics on these two examinations. The Report also divided up the examinees by deciles based on raw scores on the examination, eliminating the impact of veterans' credits and application number on the rankings. These deciles were 10% breakdowns of examinees starting with the 10% with the highest scores down to the 10% with the lowest scores. The Report analyzed the test results in combination with the several methods used to determine race and ethnicity.

28. Regardless of the method chosen to determine race and ethnicity, the Report found that whites passed consistently at higher rates than Minorities and

that whites comprised the overwhelming majority of persons in the top decile and Minorities the overwhelming majority of the tenth or last decile. The racial data by decile are important because they graphically demonstrate the pervasiveness of the discriminatory results. They are also critical from a practical point of view, since men are appointed on the basis of their test scores - those with the highest scores, mostly white, are appointed first, those with lower scores are appointed last, if at all. Conversely, those with the lowest scores, mostly Minorities, are laid-off first and recalled last.

29. For entry level examination #8046 given on July 20, 1968 the Rand Report found that the pass rates were as follows:

Race/Ethnicity	#8046* Pass Rate
White	65.1 plus or minus 3.5
Black	38.0 plus or minus 10
Hispanic	43.3 plus or minus 12.1

Thus, whites passed at a rate 1.6 times that of the Minorities. Conversely, Minorities failed at 1.4 times the rate of whites.

30. Correspondingly, the Rand Report found that whites had higher raw scores on the average than

* These results are based on the census data which the Report found to be the most reliable. Rand Report at 44.

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Minorities, as the following chart illustrates.*

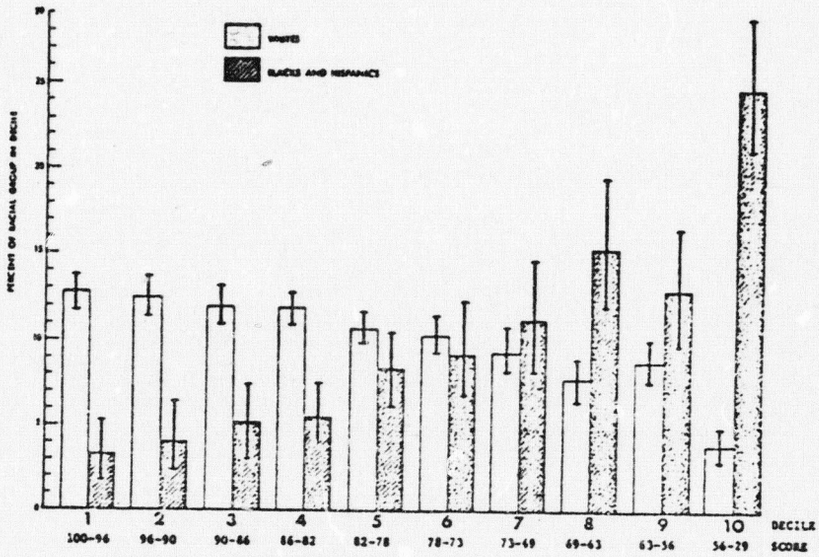

Fig. 4—Estimated exam score distributions and 95% confidence intervals for exam #8046

31. The results for entry level examination #0013 given on May 9, 1970, are very much the same. The pass rates were as follows:

#0013**

Race/Ethnicity	Pass Rate
White	84.5 plus or minus 1.6
Black	45.5 plus or minus 4.7
Hispanic	46.2 plus or minus 5.9

Thus, whites passed at 1.84 times the rate of Minorities. Conversely, Minorities failed at 3.5 times the rate of whites.

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* This chart was based on data derived from the NYCPD, the questionnaire and telephone sample, which was found to be totally consistent with census tract data.

** These results are based on the census data which the Report found to be the most reliable. Rand Report at 44.

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32. The graph of deciles for #0013 is very much the same as that for #8046*.

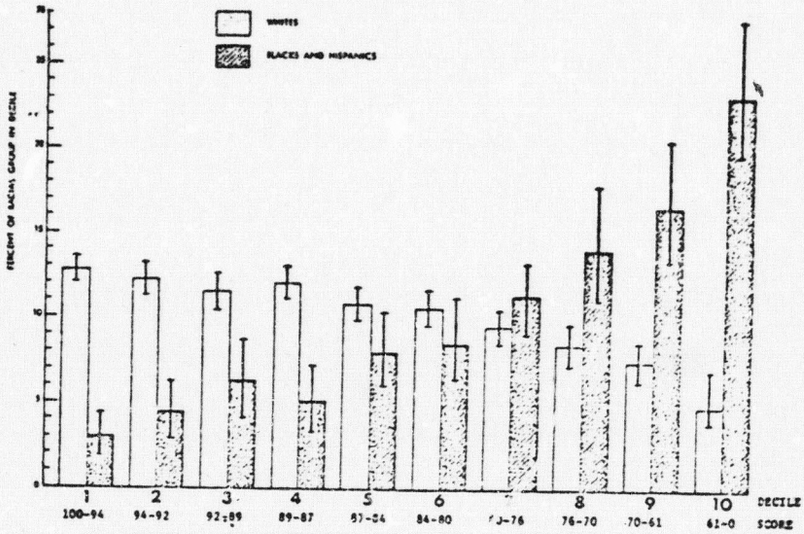

Fig. 3—Estimated exam score distributions and 95% confidence intervals for exam #0013

33. The following tables, based on the data set forth above, compare the performance of whites at various levels with the performance of blacks and Hispanics combined.

Passing and Scoring Rates for Whites
Shown as Multiples** of Rates
for Blacks and Hispanics (Combined)

EXAMINATION #0013

Passing Rate	1.68 Times
Fifth Decile or Above	2.37
Fourth Decile or Above	2.84

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* This chart was based on data derived from the NYCPD, the questionnaire and telephone sample, which was found to be totally consistent with census tract data. Rand Report at 43.

** E.g., whites passed examination #0013 at a rate 1.68 times the passing rate for blacks and Hispanics; whites scored in the fifth decile or above at a rate 2.37 times that of Minorities; and whites scored in the first decile at a rate 4.23 times that of Minorities.

Third Decile or Above	2.82
Second Decile or Above	3.26
First Decile	4.23

EXAMINATION #8046

Passing Rate	2.09 Times
Fifth Decile or Above	2.29
Fourth Decile or Above	2.99
Third Decile or Above	3.42
Second Decile or Above	3.49
First Decile	3.49

34. These results were confirmed by further statistical analysis. The Rand Report concluded:

> "To summarize, we have found substantial and statistically significant differences by race in the distributions of exam scores for whites as compared to blacks and Hispanics for both exam #8046 and exam #0013. Blacks and Hispanics scored lower than whites and failed at higher rates. . . . These findings were confirmed by three different methods of data analysis." Rand Report at 46.

35. Moreover, the Report determined based on the similarity of the results on the two examinations, which were given two years apart, that it was highly probable that the discriminatory impact was not confined to the exams studied.

> "Therefore, we are confident that the patterns observed for exam #0013 are not unique to that exam but are most likely typical of the patterns for all recent civil service patrolmen's exams." Rand Report at 38.

This conclusion is borne out by statistical data and studies of other entry examinations conducted by the defendant Department of Personnel.

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Department of Personnel Survey
of Entry Level Examination #7046

36. Racial data is also available for entry level examination #7046, which was given on November 4, 1967. The data come from an interim report of a study conducted by the Department of Personnel. A copy of this report is attached as Exhibit I hereto.

37. The interim report, which was made in August 1969, states that the Department of Personnel commenced the study of the racial impact of this examination because:

> "We [the Department of Personnel] suspected that members of these [minority] groups may have had the aptitude to successfully perform the jobs they applied for but were prevented from doing so because of below passing test grades which may have been unrelated to actual job performance." (Exhibit I, p. 1).

38. The survey was based on a random sample consisting of 1,243 of the 4,079 candidates who appeared for the examination. All but three of those selected for the sample filled out the questionnaire (Exhibit I, p. 3). The sample group was made up as follows: 71% white, 17% black, 12% Puerto Rican. A questionnaire was given to the sample group which inquired into various background items such as prior employment, education of parents and the like.

39. When the results of the written examination were compared with the background data, it was clear that the examination had a sharply discriminatory impact: white candidates achieved the highest mean scores on the total test and for each of its sub-tests; whites had a mean score of 70.5 whereas blacks had a mean score of 57.5 and Puerto Ricans had a mean score of 49.1.

40. As the writer of the draft report noted: "As it turned out, this ethnic factor (that is, whether the applicant was white, Negro or Puerto Rican) emerged as the only background factor that had a marked and consistent association with test performance." (Exhibit I, p. 5)

Entry Level Examination #9080

41. The Department of Personnel also conducted a study of entry level examinations #9080 and #9081 (for patrolman and policewoman, respectively). An interim report, attached as Exhibit J hereto, was delivered on April 13, 1971. A more recent study of results for the same examinations was completed on January 16, 1973 and is attached as Exhibit K hereto. Questionnaires were handed out to most of those who took entry level examinations #9080 (police trainee and patrolman) and #9081 (policewoman). Test score data and racial data was available for 4,241 of those persons who took the examinations. This sample consisted of 2,748 whites, 931 blacks and 390 Puerto Ricans (Exhibit K, p. 1).

42. The mean score for whites sampled was 78.54; the mean score for blacks sampled was 69.75; and the mean score for Puerto Ricans sampled was 66.66 (Ibid.). The same survey shows that whites passed the examination at a substantially higher rate than blacks. Of those sampled 76.3% of the whites passed, 47.9% of the blacks passed and 39.2% of the Puerto Ricans passed. That is, whites passed the examination at a rate 1.6 times that of blacks and 1.9 times that of Puerto Ricans. The passing score on the examination was 75. Once again, the Department of

Personnel's own survey demonstrated that an entry level examination had a substantial discriminatory impact.

Defendants' Admissions of Discrimination

43. The fact that defendants' appointment and promotion procedures discriminate unfairly against Minorities has been known to and virtually admitted by defendants even before the above compelling data were compiled.

44. Thus, Peter Smith Ring, Special Assistant to the Commanding Officer, Personnel Bureau of the NYCPD, in a memorandum dated March 3, 1972 (Exhibit L hereto) states:

> "There appears to be general agreement that existing testing, and our own past recruitment efforts, are the major roadblocks to adequate minority group representation within the Department. The former is probably unconstitutional, the latter did not truly exist until all too recently."

The Ring memorandum goes on to state:

> "Since testing must, by law, be related to job performance, it is impossible to develop a new test until we undertake a job analysis for the rank of patrolman (the same holds true for promotional examinations). To the best of my knowledge this is not being done."

45. Similarly, an exhaustive report prepared in the NYCPD Legal Department in 1972 entitled Fair Employment Law and Minority Recruitment and Promotion Within the New York City Police Department (hereinafter, the "NYCPD Minority Recruitment Report", attached as Exhibit M hereto), after a review of the entire application process states (part II, p. 7):

> "One conclusion that can be drawn from the data above is that minorities represent 30% of those that take the examination but represent a much

> smaller percentage of those who pass it. The written examination appears to discriminate the most against minority group members who aspire to be policemen."

The report continues:

> "New York City Police Department recruitment and promotional procedures, particularly the written examinations, are vulnerable to litigation charging discrimination against blacks and Hispanics. This department and the Department of Personnel will be hard pressed to show job relatedness, relevance and predictive validity of the procedures now being used to select patrolmen and superior officers." (NYCPD Minority Recruitment Report, Part III, p. 13)

46. In a report requested by defendants, dated August 28, 1972 (Exhibit N hereto) an expert from Marquette University reviewed the entire NYCPD examination system and commented:

> "The civil service exam previously used to select patrolmen has not, evidently been validated as to its capability to predict performance on the job. In its form it has been categorized as a general ability test. (Not unlike the one used to select New York policemen in 1957; subjects of a Rand performance study. This study pointed to the lack of correlation between scores attained in this exam and police performance). Consequently, the exam should not be utilized and a new test be immediately developed which predicts police performance and which is culturally fair to minority groups." [Emphasis added]

47. A NYCPD memorandum dated February 29, 1972 stated:

> "The statistics that we have compiled demonstrate a far more glaring deficiency in attracting Hispanics into the police department than even the figures on blacks. In a city where one-eighth of the population is of Spanish origin, the representation of such groups in the police department is extraordinarily low." (Exhibit O hereto)

48. A memorandum by John Heaphy, Special Assistant to the Police Commissioner, dated February 18, 1972 (Exhibit P hereto) similarly concluded:

"That the department needs to improve its performance in the recruitment of Puerto Ricans as well as Blacks cannot be disputed."

Generally Accepted Standards for Test Development

49. As is shown in the supporting affidavit of Richard S. Barrett and exhibits thereto, there are generally accepted professional standards for employee selection test development. The standards are embodied in such documents as the Equal Employment Opportunity Commission's Guidelines on Employee Selection Procedures and the American Psychological Association's Standards for Education and Psychological Tests and Manuals (Exhibits I and II to the Barrett Affidavit). The first step in constructing a valid selection examination is to determine what the employer is testing for. It is not enough that the prospective employer or promoter assert that the object of the examinations is to improve the quality of the work force. Rather, it is necessary to determine the goals of the test in detail.

The Need for a Job Analysis

50. A critical first step for test creation is the performance of a job analysis and the writing of a job description. The object of this analysis is to determine what the incumbent actually does on the job, the relative importance of the various functions, the aptitudes, knowledge and skills that are required and the kinds of attitudes that lead to success or failure and the level of performance that is necessary. Such an analysis normally includes detailed on-site inspections

and extensive interviews with persons who have expertise relating to the job to be performed. From this job analysis a detailed job description is written. Tests are written on the basis of this job description.

51. As Professor Barrett states:

> "It is virtually impossible to create a valid examination unless a job analysis and a job description have been done." (Barrett Aff. ¶6)

With a job description in hand, the next step is to develop an overall selection procedure or test which will measure the critical characteristics as accurately as possible.

52. Once a selection procedure or examination has been developed, it is imperative that it be validated. Validation is a procedure designed to test the job-relatedness of a given examination. There are three types of generally recognized validity studies: "criterion-related (or productive) validity", "content validity" and "construct validity." Of these, the most appropriate measure for the validation of entry level and promotional examinations is criterion-related or predictive validity studies.

Criterion-Related or
Predictive Validity

53. In order to conduct criterion related or predictive validity studies, the employer must first make a comprehensive determination of exactly what constitutes good performance on the job. Next, the test scores of various applicants for appointment or promotion are compared with actual performance on the job. As the EEOC Guidelines state:

> "Evidence of a test's validity should consist of empirical data demonstrating that the test is

predictive of or significantly related with important elements of work behavior which comprise or are related to the job or jobs for which the candidates are being evaluated."

Content Validity

54. A test can be said to have content validity when it can be shown through careful analysis of the job and the examination that the examination is a sample of work behavior required by the job or a direct sample of knowledge required for successful performance. Thus, a typing test would be content valid for a job that requires a large volume of typing. Content validity is an inappropriate measure to judge an entry level examination where, as here, all employees are placed in a training program to impart to them the skills and knowledge required on the job (Barrett Aff. ¶ 14, 15).

Construct Validity

55. A third recognized measure of validity is construct validity. A test can be said to have construct validity when it is shown that it is an adequate measure of some psychological construct, such as ability at spatial visualization, a certain level of verbal reasoning, arithmetical reasoning or the like which is needed on the job.

Differential Validity

56. A critical step in proper test validation generally is that separate validity studies be conducted for Minority groups to determine whether the examinations are accurate predictors of future performance for members of such groups as well as for non-Minorities. Performance

criteria are constant for all groups in such studies. The object of such studies is to apply uniform criteria of expected performance to all groups.

The Job Relatedness or Validity of the Examinations At Issue

57. As part of the discovery in Guardians I plaintiffs took the deposition of Solomon Wiener, Assistant Personnel Director for Examinations for the New York City Department of Personnel, on December 19, 1972 and February 8, 1973. Substantial additional requests for documents were made at that deposition and were complied with by defendants. The transcript of the Wiener deposition, together with all relevant documents produced by defendants, were reviewed by Professor Barrett. He concluded that none of the documents which he had reviewed contained an adequate job analysis or job description for creation of an entry level or promotional examination (Barrett Aff. ¶7). Professor Barrett's conclusion confirms admissions made by various representatives of defendants referred to in paragraphs 43 through 48 and the related exhibits. As the Ring memorandum (Exhibit L hereto) states:

> "Since testing must, by law, be related to job performance, it is impossible to develop a new test until we undertake a job analysis for the rank of patrolman (the same holds true for promotional examinations). To the best of my knowledge this is not being done."

58. Professor Barrett also concluded that no study had been made by defendants to determine just what constitutes good performance on the job in the various positions tested for. He described the development of performance criteria as "a critical step in any rational

test development program" (Barrett Aff. ¶ 13). He went on to state that:

> "No fairer and more logical selection and promotion procedures can be established or validated in the absence of detailed criteria as to what constitutes good performance on the job." (Ibid.)

59. Mr. Wiener conceded at his deposition that no criterion-related or predictive validity study has been completed for new NYCPD entry level or promotional examinations (Wiener Deposition, pp. 63-64).

60. So far as content validity is concerned, Professor Barrett first pointed out that content validity is an inappropriate measure for entry level examinations such as those used by the NYCPD. He went on to conclude that, in any event, no content validity study had been performed by defendants in connection with the development of the examinations which he studied. (Barrett Aff. ¶¶ 14, 15.)

61. So far as construct validity is concerned, Mr. Wiener conceded that no construct validity studies had been done by defendants, a conclusion which was confirmed by Professor Barrett (Wiener Deposition, pp. 192-193; Barrett Aff. ¶ 16).

62. Perhaps the most striking aspect of defendants' examination system is the fact that all entry level examinations are constructed exclusively by representatives of the Department of Personnel. There are virtually no contacts between persons writing a given test in that department and representatives of the NYCPD. The tests are apparently created in a vacuum by Department of Personnel employees, based upon previous exams

as well as texts on police administration, NYCPD rules and regulations and the NYCPD Manual.

63. In summary, it is clear that defendants' entry level examinations are not created pursuant to accepted test creation standards. They have not been validated pursuant to those or any other standards. They discriminate sharply against Minorities. They are generally recognized as non-job-related by members of the Department.

Plaintiffs Have Made a *Prima Facie* Showing that the Examinations are Discriminatory

64. On the basis of the substance of the evidence presented herein, the District Court and Court of Appeals assumed in *Guardians I* that plaintiffs had made a *prima facie* showing that the challenged examinations have a discriminatory impact on Minorities and that the burden, therefore, shifted to defendants to prove that the examinations are job-related and valid and have been prepared in conformance with generally accepted principles for examination preparation. (*See* opinions of District Court and Court of Appeals in *Guardians I*, attached hereto as Exhibits B and C.) Plaintiffs herein have again made a *prima facie* showing that defendants' examinations have a disparate adverse impact on Minorities. Defendants should, therefore, bear the burden of proving that the examinations are valid. It is virtually certain that defendants will not be able to carry that burden in the instant case.

AFFIDAVIT OF CHRISTOPHER CROWLEY READ
IN SUPPORT OF ORDER TO SHOW CAUSE

DISCRIMINATORY IMPACT OF
DEFENDANTS' HEIGHT REQUIREMENT

Defendants' Height Requirement
Discriminates Against Hispanics

65. Until 1973, the defendants maintained a 5'7" height requirement for positions of patrolmen on the NYCPD. Prior to 1969 the height requirement was 5'8" and earlier 5'9". The maintenance of that height requirement has had a discriminatory impact on Hispanics.

66. The mean height for Hispanic males in the metropolitan area is 66.8 inches or slightly less than 5'7".* Thus, over 50% of all Hispanic males were prohibited from entering the NYCPD by the maintenance of the 5'7" height requirement. The impact of the earlier height requirements of 5'8" and 5'9" was even greater -- 75.2% of all Hispanics are 5'8" or less and 84.5% are 5'9" or less. (Height Report, Table 4).

67. The mean height for both non-Hispanic whites and blacks is over 5'9". The mean height for non-Hispanic whites is 69.4 inches. The mean height for blacks is 69.1. (Height Report, Table 2). A height requirement of 5'7" eliminates from employment only 19.8% of non-Hispanic whites and 22.1% of blacks; but excludes 54.5% of Hispanic males. (Height Report p. 2) As a result of defendants' 5'7" height requirement, approximately 2.5 times as many Hispanics were not considered for positions as patrolmen as non-Hispanic whites and blacks. Those who were initially

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* "Height of American Male Youths of Military Age by Race, Ethnic Group and Selected Geographic Areas, Fiscal Year 1972", report prepared for the Office of the Assistant Secretary of Defense, Table 3 (hereinafter "Height Report") attached hereto as Exhibit Q.

excluded because of the height requirement but were later appointed were accorded lower seniority than they would have had but for defendants' discriminatory height requirement.

Defendants' Height Requirement
is Not Job-Related

68. The height requirement maintained by defendants bears no demonstrable relationship to performance for the position of police officer. The fact that the height requirement is not job-related has been admitted by defendants.

69. The defendants, in discontinuing the maintenance of the height requirement in 1973, indicated that they had no validated basis for the height requirement. See Statement of the NYCPD by Captain Brian F. Lavin, Director of the Equal Opportunity Office of the New York City Police Department to the Municipal Police Training Council, December, 1973, attached hereto as Exhibit R. The fact that the height requirement has not been reinstituted since 1973 is further indication that it has not been shown to relate to performance as a police officer.

Impact of Defendants'
Discriminatory Practices

70. The overall discriminatory impact of the entry level and the height requirement in the NYCPD described above is clearly reflected in the racial makeup of the Department. The chart on the following page, based on NYCPD data, shows that, as of 1972, the Department had a total Minority population of 8.72%. This contrasts with a Minority population in the City as a whole at that time

Incidence of Minorities at Various Ranks in the NYCPD*

Police Officers (Rank)	Whites		Blacks		Hispanics		Total Minorities		Total in Ranks
	Number	%	Number	%	Number	%	Number	%	Number
Captains & Above	536	98.17	8	1.47	2	0.36	10	1.83	546
Lieutenants	1070	97.54	22	2.01	5	0.45	27	2.46	1097
Sergeants	2414	95.38	99	3.91	18	0.71	117	4.62	2531
Patrolmen, Detectives, and Policewomen	23341	90.47	1897	7.35	563	2.18	2460	9.53	25801
Total Police Officers	27361	91.28	2026	6.76	588	1.96	2614	8.72	29975
Total Population NYC	5414747	68.58	1668115	21.13	812000	10.29	2480115	31.42	

* As of September 1972.

of 31.42%.* It should be noted that the low incidence of Minorities in the higher ranks of the NYCPD to some extent is reflective of the relatively low seniority held by Minorities since seniority is used in establishing the ranking on promotion examinations as well as the right to take those examinations.

THE NEED FOR IMMEDIATE
INJUNCTIVE RELIEF

71. Given the virtual certainty that defendants will not be able to prove that the examinations described herein are job-related and valid and the recent opinions of the Supreme Court and Second Circuit according "constructive seniority" to employees who have shown that they have been the victims of discrimination, plaintiffs have established both a strong prima facie case and a strong likelihood of ultimate success on the merits. They are, therefore, entitled to preliminary injunctive relief. As is shown in plaintiffs' Memorandum of Law, continuation of defendants' illegal discriminatory practices has caused and continues to cause irreparable injury to plaintiffs and the class they represent. There is no need to make a more particular showing of harm.

---

* This figure is derived from 1970 Census data. It seriously underestimates both the Hispanic and black population. The Bureau of the Census has determined that the census undercounted blacks by 9.9% ("1970 Census of Population and Housing, Evaluation and Research Program, Estimates of Coverage of Population by Sex, Race and Age: Demographic Analysis" DHC(E)-4 (issued February 1974)). While there is no census estimates of the undercount of Hispanic persons, the United States Commission on Civil Rights has found a substantial undercount. "Counting the Forgotten, the 1970 Census Count of Persons of Spanish-Speaking Background in the United States", United States Commission on Civil Rights (April 1974).

AFFIDAVIT OF CHRISTOPHER CROWLEY READ
IN SUPPORT OF ORDER TO SHOW CAUSE

72. The need for immediate action is particularly compelling in this case. Defendants have recently recalled a significant number of police officers and will recall additional police officers in the coming months. A letter dated April 9, 1976 addressed to laid-off police officers indicates that the NYCPD expects to temporarily rehire a number of laid-off police officers for the Democratic National Convention in July. A copy of this letter is annexed as Exhibit S hereto. The letter asks the laid off officers to indicate by April 23, 1976 whether they are interested in being temporarily rehired. Presumably preparation for hiring those interested, in the order of the present eligibility list, would begin shortly after these responses are received. In the past month there have been a number of reports and rumors regarding layoffs and recalls in the NYCPD. For example, the March 25, 1976 edition of The New York Daily News reported that City budget cuts will force the elimination of 300 NYCPD jobs. (A copy of this article is attached as Exhibit T hereto.) The New York Daily News reported on April 24, 1976 that the City now expects to eliminate over 1,500 positions in the NYCPD in the coming year. Contrary rumors have been widely circulated to the effect that a Federal grant will allow the NYCPD to recall a significant number of police officers. It is apparent that layoffs or recalls -- or both -- will take place in the NYCPD in the near future. If injunctive

relief is not granted, defendants will continue to lay off and recall patrolmen in the order from existing lists based on past discriminatory examinations. The continuation of such discriminatory practices will continue to cause irreparable harm to plaintiffs in that positions will be filled from seniority lists which perpetuate defendants' past discriminatory practices and plaintiffs, whose employment benefits have ceased or are about to cease, will be unable to support themselves and their families.

NEED FOR DISCOVERY

73. Plaintiffs need the data indicated in the discovery demand, attached hereto as Exhibit U, in order to effectively obtain preliminary and final relief. The discovery requested relates to data on individual police officers and is necessary in order for the lists to be restructured to accord plaintiffs their rightful seniority status. Plaintiffs also seek information as to the upcoming layoffs and recalls of police officers in order that the plaintiffs and the Court may be fully apprised of the urgency of the relief requested and the number of police officers to be affected. This information is under the exclusive control of defendants and is readily retrievable by them. The answers to interrogatories requesting ethnic and racial break-downs of seniority and recall lists are, on

information and belief, computerized and can be obtained with little difficulty or delay. The other interrogatories and document demands are similarly easily answered or produced.

74. Counsel for plaintiffs has previously requested from Corporation Counsel that this data be provided without Court order.

75. Plaintiffs respectfully request that this Court waive the requirement that they post security. Plaintiffs are persons of modest means and do not have sufficient assets to be able to purchase a bond of any significant amount.

76. This motion is brought on by Order to Show Cause rather than by Notice of Motion because defendants have not yet appeared and because of the need for prompt injunctive relief to prevent irreparable damage to plaintiffs.

77. No prior application has been made for the relief requested herein.

Christopher Crowley

Christopher Crowley

Sworn to before me this
day of April, 1976

_____

Exhibit A to Crawley Affidavit Notices of Right to Sue

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

JSP:HAG:ljt

NOTICE OF RIGHT TO SUE
WITHIN 90 DAYS

APR 16 1976

AIR MAIL

Hispanic Society NYPD
c/o Kenneth Kimerling, Esquire
Staff Attorney
Puerto Rican Legal Defense
& Education Fund, Inc.
95 Madison Avenue
New York, New York 10016

Re: EEOC Charge Against New York City Police Department and New York City Department of Personnel
No. TNY5-1109

Dear Members of Hispanic Society NYPD:

Because the above charge was filed on your behalf, and more than 180 days have elapsed since the Equal Employment Opportunity Commission assumed jurisdiction over that charge, and no suit based on that charge has been filed by this Department, and since you through your attorney have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq., against the above-named respondents.

If you choose to commence a civil action, such suit must be filed in the appropriate United States District Court within 90 days of your receipt of this Notice.

Your attorney may inspect the investigative file pertaining to the case at a time and place convenient to the parties. That file is located in the EEOC District Office, at 90 Church Street, Room 1301, New York, New York 10007.

We request that you send this Department a copy of any complaint initiating suit.

This Notice should not be taken to mean that an agency of the United States has made a judgment as to whether or not your charge is meritorious.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

By: Herbert A. Goldsmith Jr.
HERBERT A. GOLDSMITH, JR.
Attorney
Employment Section

cc: Arthur W. Stern
District Director
New York District Office
Equal Employment Opportunity
Commission
90 Church Street, Room 1301
New York, New York 10007

Exhibit A to Crawley Affidavit Notices of Right to Sue

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the Division Indicated and Refer to Initials and Number

JSP:HAG:ljt

NOTICE OF RIGHT TO SUE
WITHIN 90 DAYS

APR 16 1976

AIR MAIL

Mr. Oswaldo Perez
c/o Kenneth Kimerling, Esquire
Staff Attorney
Puerto Rican Legal Defense
& Education Fund, Inc.
95 Madison Avenue
New York, New York 10016

Re: EEOC Charge Against New York City Police Department and New York City Department of Personnel
No. TNY5-1109

Dear Mr. Perez:

Because the above charge was filed on your behalf, and more than 180 days have elapsed since the Equal Employment Opportunity Commission assumed jurisdiction over that charge, and no suit based on that charge has been filed by this Department, and since you through your attorney have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq., against the above-named respondents.

If you choose to commence a civil action, such suit must be filed in the appropriate United States District Court within 90 days of your receipt of this Notice.

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We request that you send this Department a copy of any complaint initiating suit.

This Notice should not be taken to mean that an agency of the United States has made a judgment as to whether or not your charge is meritorious.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

By: Herbert A. Goldsmith, Jr.
HERBERT A. GOLDSMITH, JR.
Attorney
Employment Section

cc: Arthur W. Stern
District Director
New York District Office
Equal Employment Opportunity
Commission
90 Church Street, Room 1301
New York, New York 10007

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WASHINGTON, D. C. 20530

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CERTIFIED
No. 602554
MAIL

Hispanic Society NYPD
Mr. Oswaldo Perez
c/o Kenneth Kimerling, Esquire
Staff Attorney
Puerto Rican Legal Defense
& Education Fund, Inc.
95 Madison Avenue
New York, New York 10016

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64a(6)
Exhibit F to Crawley Affidavit to Ryan, J.
Letter Regarding 1972 Action

PUERTO RICAN LEGAL DEFENSE & EDUCATION FUND, INC.
95 MADISON AVENUE
NEW YORK, NEW YORK 10016
212-532-8470

JACK JOHN OLIVERO
CHAIRMAN OF THE BOARD
OSCAR GARCIA-RIVERA
EXECUTIVE DIRECTOR

March 29, 1976

The Honorable Sylvester J. Ryan
United States District Court
Foley Square
New York, New York

Re: Guardians Association v. Civil Service Commission
72 Civ. 928

Dear Judge Ryan,

On March 25, 1976, your secretary returned the enclosed Order to Show Cause advising me that the action is closed. I believe there has been some ministerial error in this matter and am, therefore, returning the Order to Show Cause and a Supplemental Affidavit, personally served on all parties, for your consideration.

This Court denied plaintiff's motion for preliminary injunction on July 12, 1973 (A copy of that Endorsement is attached). The Second Circuit affirmed the denial of that motion on November 21, 1973. Guardians Association v. Civil Service Commission, 490 F.2d 400 (2nd Cir. 1973). However, there has never been a final adjudication of the merits of this action, solely the denial of a preliminary injunction. In fact, the Court of Appeals foresaw further action in this matter by remanding the case with instructions to the Court to provide for disclosure to plaintiffs of the 1973 entry level examination. Id. at 404. I respectfully request that this matter be restored to the court s docket and the enclosed Order acted upon.

In regards to the Order, I have received the affidavit of Paula Omansky, counsel for defendants, and believe that it requires only a brief response. This case is not moot

simply because part of the relief, the hiring of Minority patrolmen, has been obtained. The discriminatory hiring practices of defendants continues to effect plaintiffs' seniority, and that matter remains to be remedied.

> Simply stated, a case is moot when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome...Where one of the several issues presented becomes moot, the remaining live issues supply the constitutional requirement of a case or controversy. (Citations omitted)
>
> Powell v. McCormack
> 395 U.S. 486,496-497 (1969)

The "live" issue is seniority and lay off (See, Acha v. Beame (Docket No. 75-7388, February 19, 1976) Chance v. Board of Examiners, (Docket Nos. 75-7161, 75-7164, January 19, 1976) nothing has happened to moot that relief. In fact, as the United States Supreme Court held in Franks v. Bowman Transportation Co., Inc., 44 U.S.L.W. 4356 (March 23, 1976) the district court must provide for constructive seniority unless there is some reason that such relief would run counter to the purposes of Title VII of the Civil Rights Act of 1964, 42 U.S. C. 2000e et seq.

Finally, the matters presented in this case are very similar to those in Acha v. Beame now pending before the Honorable Kevin T. Duffy, U.S.D.J. This Court may want to consider the transfer of these related cases to one judge pursuant to Rules 13 and 14 of the Calendar Rules of the United States District Court for the Southern District of New York. Because relief in these cases, the restructuring of seniority lists for Minority and women police officers, will necessarily overlap and have to be coordinated, the Court should consider consolidation pursuant to Rule 42(a) of Federal Rules Civil Procedure.

If the Court wishes to consult with counsel regarding the matters raised in this letter, counselfor plaintiffs is at the Court's disposal.

Respectfully yours,

Kenneth Kimerling

Kenneth Kimerling,
An Attorney For Plaintiffs

/jl
Encl.

cc W. Bernard Richland
Corporation Counsel
by Paula Omansky, Esq.

Phillips, Nizer, Benjamin, Krim and Ballon

Kaye, Scholer, Fierman, Hays & Handler

Eddie Aponte, Clerk

Exhibit I to Crawley Affidavit. Interim Report on Exam #7046

INTERIM REPORT OF RESEARCH

ON POLICE TRAINEE EXAM #7046

The traditional method of personnel selection by the City of New York's Personnel Department is through competitive written and oral tests. Several studies such as were done at Berkeley, California and at the New York Port Authority have indicated that this selection process screens out members of minority groups as they do not do well on these types of tests.

In 1967 the New York City Department of Personnel began a study to determine whether certain minority groups were, in fact, being excluded from City jobs because they did not pass our written tests. We suspected that members of these groups may have had the aptitude to successfully perform the jobs they applied for, but were prevented from doing so because of below-passing test grades which may have been unrelated to actual job performance.

Our first step was to establish whether our tests did discriminate against minority groups, and, if so, to what extent. The exam with which we chose to start the study was for Police Trainee, which was held November 4, 1967. The key advantages of using this exam were that, as an entrance-level, open-competitive one, we would be able to study a large, as well as socially and economically heterogeneous, candidate population.

A Police Trainee, after orientation and training at the Police Academy, performs, under direct supervision, routine non-law enforcement tasks in Police Headquarters or field units. On reaching his 21st birthday he

receives a regular appointment as a Patrolman, without taking any further written or physical examinations, provided he has a satisfactory record as a trainee and passes a medical test identical to the one given to Patrolman candidates.

The test given to the candidates that November consisted of 100 objective-type items involving judgment, spatial relations, verbal analogies, vocabulary, arithmetic reasoning and reading comprehension. If we found the test discriminatory, we would then analyze these subject areas, or sub-tests, to determine the extent of the discrimination.

A long-range phase of our study was to determine which test factors best predict successful performance at the Police Academy, and do not invalidly eliminate members of minority groups. Criteria for this are to be the grades and other evaluations from the candidates' records at the Police Academy.

Those items, if any, which predict good performance, but tend to be answered incorrectly by minority group candidates, were to be separated out. These questions would be compared to those items, if any, which predict good job performance but do not discriminate against minority group members. As a first step toward this end we would review the test items to ascertain if we had any items which were answered equally well by all groups. From this analysis we hoped to identify what makes a question a valid indicator of successful job performance, and to isolate those factors which discriminate against minority candidates.

Because several studies had shown that socio-economic status has some relationship to test scores, we studied the nature of that relationship.

To do so, we designed and analyzed the data supplied by a personal history questionnaire, which was answered by those candidates who were selected to be the subjects.

The procedure for administering the Police Trainee exam was the usual procedure used by the Department of Personnel. Candidates were asked to report to various high schools to take the written test at 9 A.M. They were given seating cards directing them to a particular room and seat in that room. These seating cards had been scrambled so that each candidate was randomly seated.

Of the 4079 candidates who appeared for the test, 1243 were selected by the following procedure to answer a personal history questionnaire: every third room was selected at random and all candidates in these rooms were directed, upon completing the written test, to go to a nearby room. There, they were asked to fill out the questionnaire. Although this was completely voluntary, only three candidates refused.

The following personal data were compiled from the questionnaires:

Ninety-five per cent of the candidates ranged in age between 15 and 21, with the mean at 17.7 years. Only 67 candidates were married; 3% of the white candidates were married, 13% of the Negroes, and 12% of the Puerto Ricans.

They came from the five boroughs of New York City and three surrounding counties -- Nassau, Suffolk and Westchester. However, only 21% of the whites resided in New York County, that is, Manhattan, whereas 43%

of the Negroes and 70% of the Puerto Ricans lived in New York County. Just 6% of the Puerto Ricans came from the borough of Queens. The white population was distributed throughout the area, but the Negro candidates came mostly from New York County, Kings County and Queens County, while the Puerto Ricans were mostly from New York County, Kings County and the Bronx.

The group was composed of 17% Negroes, 12% Puerto Ricans and 71% whites. English was spoken in the homes of 92%, Spanish in the homes of 14% and Italian in the homes of 11%.

Their education ranged from elementary school graduation to college graduation. The average number of years of schooling the population had beyond elementary school was 3.4 years. Forty-six per cent of the population had a high school diploma. Of these, 44 % had a general diploma, 33% an academic diploma, 11% a vocational diploma, 8% a commercial diploma, and 7% had an equivalency diploma.

Including part-time employment, 54% of the candidates reported they had jobs. Fifty-five per cent of the white candidates were employed, 54% of the Negroes, and 49% of the Puerto Ricans. Ninety-one per cent of the white group's fathers were employed, compared to 86% of the Negroes' fathers and 77% of the Puerto Ricans' fathers.

Forty-one per cent of the fathers of the white and Negro candidates were high school graduates; but only 15% of the fathers of the Puerto Rican candidates had a high school diploma, and 47% had finished only elementary school.

Forty per cent of the white group's mothers were employed, whereas 50% of the Negro candidates' mothers had jobs and 34% of the Puerto Rican candidates' mothers had jobs. Fifty-eight per cent of the white group's

mothers but only 42% of the Negroes' mothers had a high school diploma, while only 8% of the Puerto Ricans' mothers had graduated from high school. Sixty-eight per cent of the Puerto Rican candidates' mothers had gone only as far as elementary school, and none had attended or graduated from college. Of the Negro candidates' mothers, 7% had some college and 4% were college graduates; while 3% of the whites' mothers had attended college and 4% had graduated.

At a later date we sent follow-up questionnaires to candidates who had answered the personal history questionnaire and passed the written test, but failed to show up for the medical and physical examinations.

Of the 108 who replied, 34% said they were in the military service, 7% were no longer interested, 5% wished to keep their present jobs, 2% said the money was inadequate, 13% were still in school, 4% didn't show up for medical reasons, 2% were away from home at the time, 3% had been appointed from previous lists, 11% intended to apply for the next exam, and 20% had no intention of applying for the next exam.

To analyze the results of the written exam and compare them with the background data, we used a sample of 1216 men, 858 who reported they were white, 212 who were Negro and 146 who were Puerto Rican. As it turned out, this ethnic factor (that is, whether the applicant was white, Negro or Puerto Rican) emerged as the only background factor that had a marked and consistent association with test performance.

White candidates achieved the highest average scores on the total test and for each of its six sub-tests; their average score was 70.5. Puerto

Ricans had the lowest average score -- 49.1. And Negroes fell in the middle, with an average score of 57.9. Our analysis also reveals that candidates with higher socio-economic status, who were usually whites, had higher scores. Candidates who lived in more segregated areas, those with the highest concentration of Negroes, had lower scores.

We reviewed the 100 test items to determine whether any had not differentiated between Negroes and whites and between Puerto Ricans and whites. We found a number of items on which Negroes and Puerto Ricans performed within 11% of whites. These items were generally the easier test items for the minority populations. That is, of the 45 items where the Negroes scored within 11% of whites, the mean score for Negroes was 69%. However, on the remaining 55 items, where the difference between whites' and Negroes' scores was greater than 11%, the mean score for the Negroes was only 50%. The difference of 19% in the Negroes' performance on these two groups of test items is statistically significant.

In a similar vein, Puerto Ricans scored within 11% of the white population on 20 items. Their mean score for these items was 65%. On the remaining 80 items, the Puerto Rican population's mean score was only 46%. This difference of 19% was statistically significant.

We reviewed the questions to determine if there were other findings which would be relevant. We found that, by a subjective evaluation of items in the judgment sub-test, those items which were more concrete or more relevant to the minority groups' experience tended to fall into the group of 45 items where the two minority populations scored within 11% of the white population. For example, more of the minority groups knew how to solve a practical street problem than knew the reason for a particular official action. Also, we found

that the greatest disparity in performance of the white population and the Puerto Rican population was on the vocabulary and verbal analogies sub-tests. This is understandable in light of the language difficulties that Puerto Ricans probably have.

A word of caution is in order. This is an interim report. So our findings are only tentative. Since we have not yet completed our study, we don't know whether the difference in scores reflects a built-in bias or a true difference in ability to perform the duties of the job.

Exhibit J to Crawley Affidavit Interim Report on Exam #9081

Women Ex. 3

Director, Bureau of Examinations 'A'

Examining Division B

April 13, 1971

Interim Report on Research on Police Trainee, Patrolman, Exam. No. 9080 and Policewoman, Exam. No. 9081

In 1967 the New York City Department of Personnel began a study to determine whether minority groups were being unfairly excluded from City jobs. This would be considered the case if we found that members of minority groups who may have had the aptitude to succeed on the job were prevented from being hired because they failed written tests which were not related to actual job performance.

The examination chosen for this study was for the position of Police Trainee, held on November 4, 1967. To determine which factors influence performance on the written test, 1243 candidates were selected at random and asked to complete personal history questionnaires. The group was composed of 17% Negroes, 12% Puerto Ricans, and 71% whites. From analysis of all available data, ethnic group membership emerged as the only background factor that had a marked and consistent relationship to test performance. Whites achieved the highest scores on the total test (mean 70.5) and on each subtest; Puerto Ricans had the lowest scores in both categories (mean on total test 49.1); and blacks scored between them (mean on total test 57.9).

The 100 test items were then reviewed to determine whether any had not differentiated between whites and Negroes or between whites and Puerto Ricans. Negroes scored within 11% of whites on 45 items and Puerto Ricans scored within 11% of whites on 20 items. A subjective evaluation of the non-differentiating items revealed that they were more concrete or more relevant to the minority groups' experience. (For a more detailed discussion of the findings of this study, see the attached report.)

It was intended that this study would follow the subjects who were hired as Police Trainees through the Police Academy and thereby determine which test factors

were the best predictors of successful job performance. Unfortunately, it became impossible to conduct a formal validity study when the needs of the service forced the Police Department to defer Academy training for those new Police Trainees and to place them in varied, often non-comparable assignments.

The current study was based on the examinations for Police Trainee, Patrolman (No. 9080) and Policewoman (No. 9081) held on October 25, 1969. A substantially larger subject population was chosen to insure that we would be able to perform a validity study with this group. In pursuing this goal, we will also learn whether our predictions based on the earlier study have been confirmed. If indeed they are confirmed, a greater proportion of the items on this test should not differentiate between candidates on an ethnic basis since special efforts were made to use concrete situations in judgment items, to choose as vocabulary items words with Latin roots, and to minimize the use of academic language in the phrasing of questions and instructions.

The written test for Police Trainee, Patrolman and Policewoman was administered in two sessions (AM and PM) according to standard Department of Personnel procedures at five New York City high schools. As each candidate finished the test he was told to report to another room on the same floor. Once there, he was asked to complete a confidential personal history questionnaire. There were approximately 9,300 candidates; approximately 8,000 completed questionnaire forms which asked about their ethnic, social, economic, and educational backgrounds. This questionnaire was essentially the same in content as the one used for the earlier study, but the format was completely revised. Whereas the first questionnaire was a four-page, fill-in form, and the data had to be manually keypunched onto cards, the new form was designed to be mark-sensed by the candidate and fed through our optical scanning machine. The optical scanner would then punch the data into [illegible] cards.

A great deal of work had to be done on these questionnaires, however, before

they could be processed by machine. Each paper was checked by an urban corps intern who removed any stray marks, cleaned up any incomplete erasures, and pointed out to the researchers any irregularities in the identifying data. In addition, about 2,000 questionnaires were coded using the socio-economic scales of the Hamburger and Shevky-Bell indices. This information will assist us in analyzing the effect of such factors as father's occupation, degree of urbanization and segregation of the candidate's neighborhood, and social rank on test ratings. After all this manual work was completed, cards were punched from the questionnaires by the optical scanner. Cards were also punched from all of the candidates' test answer papers after the second of the two lists was established in late January 1970.

The following personal data have been compiled from a preliminary analysis of the questionnaires.

Whites comprised 63% of the subject population, blacks 24%, and Puerto Ricans 11%; 7% of the subjects were born in Puerto Rico. Eighty-six percent were men and 14% were women. Most of the subjects lived in the five boroughs of New York City - 11% in Manhattan, 30% in Brooklyn, 23% in Queens, 20% in the Bronx, and 5.7% in Staten Island; only 9.6% lived in the surrounding counties of Nassau, Suffolk, and Westchester.

Twenty-six percent of the subjects were between 16 and 18 years of age; 25% were 19-21; 25% were 22-24; 16% were 25-27; and 8% were 28 or older. Three-fourths were not high school graduates (many were probably still in school at the time of the test) but 79% were employed, 80% of these full-time and 20% part-time. English was spoken in the homes of 92% of the subjects, Spanish in 5% and Italian in 3%.

We also obtained data as to where the candidates learned about this test. This information was given to Mr. DeMille. A large number of candidates (41%) found out about the test from friends and relatives who were city employees, especially policemen. The next largest group (13%) were candidates who heard about the examination through The Chief.

While making this preliminary analysis, we discovered that the optical scanner was defective and a large number of cards had been mis-punched. In some cases, we had to paint over erasures on the questionnaires with opaquing fluid because the optical scanner was overly sensitive and had registered erasures. In other cases, the scanner had in error shifted information by as much as 5 columns. We believe these errors have all been corrected. A duplicate deck has been punched to provide us with replacements in the event the original deck is damaged or broken up during analysis. We have been waiting for data processing to check these two decks. When we are certain as to their accuracy, Dr. Harold Levine of New York University will do a factor analysis comparing the biographical data with the candidates' responses to the test items.

These results should be very informative. Upon obtaining this analysis, we will measure the extent to which those items which do not appear to discriminate among candidates on the basis of their ethnic background predict performance at the Police Academy and on the job. If we can do this we will have taken an important step toward the development of tests which do not discriminate and which are also better able to predict performance.

B. Fishman
Personnel Examiner

P. Siegal
Acting Chief, Examining
Division R

Exhibit K to Crawley Affidavit Intradepartmental Memorandum

THE CITY OF NEW YORK

Intradepartmental Memorandum

To: Assistant Personnel Director for Examinations

From: Phillip Siegal

Date: January 16, 1970

Subject: Status of study of Police Trainee P.D., Patrolman, No. 9080 and Policewoman No. 9081 in connection with the [illegible] of candidates and related matters.

The written tests for Police Trainee (P.D.), Patrolman Exam. No. 9080 and Policewoman, Exam. No. 9081 were held on October 25, 1969. There were 6,826 candidates who appeared for Exam. No. 9080 and 2,499 candidates who appeared for Exam. No. 9081, making a total of 9,325 candidates. Since participation in the study was voluntary, about 7,500 candidates chose to participate in the study. Data from the confidential biographical questionnaire which these candidates completed and from their answer papers were punched on data processing cards.

There are at present 6,799 usable demographic cards and 8,528 usable test score cards. From these two data pools we were able to obtain 4,241 cases. Each case of two cards had matching identification numbers. These 4,241 sets of two cards, which include male and female candidates, constitute our working deck of cards.

The 4,241 cases have been cross-tabulated on two variables. One is the test score which has been dichotomized at 75 (the pass mark) and the other is the ethnic designation. The 4,241 cases have been compared with the 6,799 usable demographic cards and there are no significant differences with respect to demographic variables.

The population of the sample of male and female candidates was made up of 931 Black candidates, 390 Puerto Rican candidates and 2,748 White candidates.

The mean score of the Black candidates is 69.75 and the standard deviation is 16.07. The first quartile score is 62.24, the second is 72.92 and the third is 81.07.

The mean score for the Puerto Rican candidates is 66.66 and the standard deviation is 16.56. The first quartile score is 57.65, the second 69.14 and the third 78.55.

The mean score for the White candidates is 78.54 and the standard deviation is 15.00. The first quartile score is 74.00, the second is 82.37 and the third quartile is 88.58.

TABLE I — 75% = passing mark

	Total of Male and Female Candidates			
	Failing	Passing	Total	% Passing
Black	485	446	931	47.9
Puerto Rican	237	153	390	39.2
White	652	2,096	2,748	76.3
Other	15	14	29	
Did not answer	80	63	143	
	1,469	2,772	4,241	

Exhibit K to Crawley Affidavit Intradepartmental Memorandum

Table I shows that of the total 931 Black candidates 446 (47.9%) passed; of the total of 390 Puerto Rican candidates, 153 (39.2%) passed and of a total of 2,748 White candidates, 2,096 (76.3%) passed.

TABLE II

Separated Male and Female Candidates

	Mean	Standard Deviation	Quartile 1st	2nd	3rd	N
Black Male	69.940	16.968	60.861	71.413	79.969	686
Black Female	75.189	11.539	68.125	76.864	83.350	238
Puerto Rican Male	66.008	16.776	56.375	68.727	77.861	359
Puerto Rican Female	75.519	10.261	64.875	77.250	83.625	27
White Male	78.030	15.577	73.491	81.881	88.309	2,482
White Female	83.833	10.476	80.083	85.800	90.458	259
			Did Not Indicate Sex			191
					Total	4,241

These results must be evaluated only in terms of the population which applied for the test. This was a self-selected population. This means that the three ethnic groups were not equated in terms of such factors as socio-economic background, education, interest, other employment opportunities, etc. It could very well be that if these three groups were equated on relevant factors, the statistical findings factors would have turned out to be quite different.

In this connection it can be seen in Table II that the Black, Puerto Rican and White female candidates had higher mean scores than the males of the same ethnic group. Thus, it appears that a self-selection factor is influencing the mean scores of each ethnic group. There is no evidence that women do better than men in general aptitude tests such as would be given for policemen. One strong conclusion which can be made is that those females who were better able t pass a written aptitude test applied, and the better qualified males chose not to apply. Presumably, they were seeking other employment.

The statistics for a previous Test No. 7046, Police Trainee, are as follows:

TABLE III A

	Mean	SD
White	70.5	12.9
Negro	57.9	14.6
Puerto Rican	49.1	15.7

TABLE III B

Comparison of means of Test No. 9080 (males) with Test No. 7046:

	78.0 (9080)		67.9 (9080)		
White	70.5 (7046)	Blacks	57.9 (7046)	P.R.	66.0 (9080)
	7.5 pts. rise		10.0 pts. rise		49.1 (7046)
					6.9 pts. rise

Exhibit K to Crawley Affidavit Intradepartmental Memorandum

Table III B compares Test No. 9080 with the Police Trainee Test No. 7046. The construction of Test No. 9080 was guided by the recommendations made following a study of Test No. 7046. The data in Table III indicate that as a result of following the recommendations, there was a rise in the mean score of all candidates, with the Black candidates achieving the largest increase in mean score.

Since few candidates were appointed, we do not have a population which we can use as a criterion for validation purposes. We are therefore developing a validation method, using total and sub-test scores, individual items and demographic data. Data from Exam. No. 9080 and Exam. No. 9081 will be evaluated in terms of the recommendations which were developed following the study of Exam. No. 7046.

Phillip Siegal

Phillip Siegal, Chief
Examining Division S

64a (23)
Exhibit O to Crawley Affidavit, Memo Regarding Recruitment In Puerto Rican Community

POLICE DEPARTMENT
NEW YORK, N. Y. 10013

CH. PERS.

PHILIP A. LACOVARA
SPECIAL COUNSEL TO THE POLICE COMMISSIONER

February 29, 1972

MEMORANDUM FOR: POLICE COMMISSIONER

Subject: RECRUITMENT ~~OF~~ IN PUERTO RICAN COMMUNITY

In response to a request from Deputy Commissioner Neco suggesting that a study be commissioned to survey the availability of Puerto Rican males for recruitment by the Police Department, you asked for my comments and requested that I secure those of one of your Special Assistants. The original proposal from Commissioner Neco and the comments of Special Assistant John Heaphy are attached.

Mr. Heaphy's analysis is somewhat more critical than I would be in discussing the merits of the proposal submitted by Commissioner Neco. The proposal is certainly not fully developed and does not constitute anything like a research design or a concrete program for action. However, it does suggest an approach which I think would be profitable, namely the inquiry into a rather peculiar sub-culture in New York as to the likelihood of any recruitment efforts we might want to make in the Puerto Rican Community. In approaching the Puerto Rican community as a source for applicants for the New York City Police Department, it is my sense even a more difficult problem than trying to attract black candidates. In part this is because the Puerto Rican community is more isolated because of its recent growth in New York and because of the obvious language barriers. In order to plan any recruitment effort, it is important to have some sociological profile of the Puerto Rican community so that we know approximately how many young men and women are in the class that we are aiming at. Specifically, we need people of a certain age, who are at least literate in English and preferably bi-lingual and have obtained a degree of educational achievement which would blend with our goals for increasing the educational level and standards for the department. Beyond those objective data, a meaningful recruitment program will require some sophisticated understanding of the attitudes exhibited by people in the class at whom our efforts will aimed together with an understanding of the motives that might induce them to apply for and join the New

Exhibit Q to Crawley Affidavit Memo Regarding Recruitment In Puerto Rican Community

York City Police Department. This is essentially what Commissioner Neco has proposed, and Mr. Heaphy's suggestion for a "market research" survey essentially seeks the same objective. It seems, therefore, that all of us are in agreement that a survey of this type would be extremely useful. Mr. Heaphy's emphasis is on development of a program of what to do after this information is marshalled. I of course agree that this is an indispensable aspect of the rationale for such a survey as I am sure it does for Commissioner Neco. This is essentially a question of preparation of the project design.

The New York City Police Foundation has given as one of its major areas of interest projects dealing with minority recruitment. Traditional thinking in this area has tended to focus on blacks "blacks and Puerto Ricans". This approach is deficient in that it assumes that all minority communities are fungible and that a program directed at blacks will also appeal to Puerto Ricans. The statistics that we have compiled demonstrate a far more glaring deficiency in attracting Hispanics into the Police Department than even the figures on blacks. In a city where one-eighth of the population is of Spanish origin, the representation of such groups in the Police Department is extraordinarily low. The recent, abortive hearings of the United States Civil Rights Commission would have focused on these statistics and asked very searching questions about efforts to improve them. I therefore suggest that this question be referred to the Personnel Bureau, which now has a Puerto Rican Lieutenant working for Deputy Inspector Henry in the Recruiting Unit, so that an adequate research proposal can be developed and the New York City Police Foundation approached as a source of funding such a project. Much of the necessary data could be generated without going to any outside consulting or marketing firm but the kind of sophisticated survy and recommendations that are called for by this recommendation would require the services of outside experts.

Philip A. Lacovara

Philip A. Lacovara

64a (25)

Exhibit P to Crawley Affidavit - Memo Regarding Recruitment In Puerto Rican Community

POLICE DEPARTMENT
NEW YORK, N.Y. 10013

February 18, 1972

From: John Heaphy, Special Assistant to the Police Commissioner

To: Police Commissioner

Subject: RECRUITMENT IN PUERTO RICAN COMMUNITY

That the department needs to improve its performance in the recruitment of Puerto Ricans as well as Blacks cannot be disputed. I seriously question, however, the value that the type of research program indicated here would have in this regard.

The proposed study appears to go only half way, in that it will give us certain basic information but not tell us specifically what to do with it. From the very brief sketch presented, it appears to be very academic, and not nearly functional enough. The simple data gathering that is suggested could probably be done in-house at little or no cost.

If the department intends to put any resources at all into this area, I suggest that it adopt a much more practical, functional approach. Specifically, we should hire a professional advertising agency to do a "market survey" and propose a specific recruiting campaign within our real constraints on implementation. Basically, we want the answers to two questions:

1. With the resources that we have at hand, or that we can reasonably expect to have in the near future, what vehicle can we best use to contact the most qualified Blacks and Puerto Ricans?

2. After contacting them, what approach, theme, or message will most likely motivate them to join the department?

I have had some prior experience with the type of program I suggest, and feel strongly that it can prove quite valuable. If you are going to invest $25,000, or any amount, in this area, I urge you to seriously consider the above recommendation.

John Heaphy

John Heaphy
Special Assistant to the
Police Commissioner

sl

AFFIDAVIT OF SARA E. STEINBOCK READ
IN SUPPORT OF ORDER TO SHOW CAUSE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- X

THE GUARDIANS ASSOCIATION, et al., Plaintiffs,	:	76 Civ. 1982 (R.L.C.)
-against-	:	AFFIDAVIT IN SUPPORT OF PLAINTIFFS' APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION
CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK, et al., Defendants.	:	

- X

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

SARA E. STEINBOCK, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and co-counsel for the plaintiffs herein. I make this affidavit in support of plaintiffs' application for the issuance of a Temporary Restraining Order and a Preliminary Injunction enjoining and restraining defendants from laying off or recalling police officers in the New York City Police Department ("NYCPD").

2. The NYCPD is about to recall a significant number of police officers on a temporary basis in conjunction with policing the Democratic National Convention in July. Substantial numbers of police officer positions are expected to be eliminated due to budget cuts in the near future.

3. Layoffs and recalls in the NYCPD are made according to seniority lists which are based primarily

on performance on entry examinations. Those entry examinations have been shown to have a discriminatory impact on blacks and Hispanics. The seniority lists, and the layoffs and recalls from those lists, perpetuate defendants' past discriminatory practices.

4. Immediate injunctive relief is essential because defendants are about to act in violation of plaintiffs' rights respecting the subject of this action. Plaintiffs will suffer immediate and irreparable injury unless defendants are restrained before a hearing can be had in that their unemployment benefits have ceased or are about to cease and they will be unable to support themselves and their families.

5. On April 30, 1976 at 4:30 P.M. I telephoned the office of the Corporation Counsel of the City of New York and informed Mr. Doron Gopstein, head of the General Litigation Division, that plaintiffs were at that time filing a complaint in this action and that an application for a Temporary Restraining Order would be made on May 3, 1976. After the complaint was filed and I was able to speak with Judge Carter's law clerk, Thomas Kline, I again telephoned Mr. Gopstein to inform him that Mr. Kline suggested that plaintiffs make their application for a Temporary Restraining Order before Judge Carter at 11:20 A.M. in courtroom 318. Because the complaint was filed so late on Friday afternoon, April 30, 1976, formal service of the Summons and Complaint was not possible at that time. I did, however, offer to provide Mr. Gopstein with copies of the Summons, Complaint, and Plaintiffs' Discovery Demand by

AFFIDAVIT OF SARA E. STEINBOCK READ
IN SUPPORT OF ORDER TO SHOW CAUSE

9 A.M. Monday morning, May 3, 1976. This has been done.

6. No prior application has been made for the relief sought in this application.

Sara E. Steinbock

Sworn to before me this

day of May, 1976

AFFIDAVIT OF RICHARD S. BARRETT READ
IN SUPPORT OF ORDER TO SHOW CAUSE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -x

THE GUARDIANS ASSOCIATION OF THE NEW YORK CITY POLICE DEPARTMENT, INC., THE HISPANIC SOCIETY OF THE NEW YORK CITY POLICE DEPARTMENT, INC., et al.,	:	Civil Action No. 72 Civ. 928 (S.J.R.)
Plaintiffs,	:	
-against-	:	AFFIDAVIT
CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK, et al.,	:	
Defendants.	:	

- - - - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

RICHARD S. BARRETT, being duly sworn, deposes and says:

1. I make this affidavit in support of plaintiffs' motion for a preliminary injunction. I am presently Visiting Professor of Management Science at Stevens Institute of Technology in New Jersey, and a consultant in connection with industrial psychological problems, particularly matters dealing with fair employment issues. In this connection I am now consulting with the Pennsylvania State Police Department to make their selection and promotion procedures valid and fair for minority candidates. In the past I have consulted on employment testing with, among others, National League for Nursing, the United States Air Force, Standard Oil (New Jersey), Lever Brothers, and Equitable Life Assurance Society. I was the principal investigator on a study sponsored by the Ford Foundation which resulted in publication of the book Testing and Fair Employment, by Kirkpatrick,

J., Ewen, R., Barrett, R., and Katzell, R. I received a B.S. in Administrative Engineering from Cornell University in 1948, an M.A. in Education from Syracuse in 1952, and a Ph.D. in Industrial Psychology from Western Reserve University in 1956.

2. In preparing this affidavit I have examined numerous documents provided to me by plaintiffs' counsel including entry level and promotional examinations of the New York City Police Department (the "NYCPD") and the corresponding scoring keys, notices of examinations, test plans, item analyses and analyses of protests submitted by candidates taking these examinations prepared by the Department of Personnel. I also reviewed all documents submitted by defendants in response to plaintiffs' demands to produce all job analyses, job descriptions, performance evaluation criteria and validity studies in connection with the entry level and promotional examinations. The examinations to which I gave the closest attention are listed below:

a. Patrolman (Police Trainee, Policewoman) examinations 0013 and 9080,

b. Sergeant examinations 8528 and 1453,

c. Lieutenant examinations 9925, 9580 and 6512,

d. Captain examinations 1454 and 1506.

I also examined the following reports submitted to the Department of Personnel:

(1) Procedures used in New York City for Promoting Police Officers to Sergeant, Lieutenant and Captain, Educational Testing Service, June 1970, ("ETS Study, Phase I"), (2) Development of Improved Examination Procedures for Promotion of Police Officers to Sergeant, Lieutenant, and Captain in the New York City Police Department, Phase II,

Educational Testing Service, December 1970, ("ETS Study, Phase II"), (3) Development of Improved Examination Procedures for the Promotion of Police Officers in New York City, Phase III, Educational Testing Service, June 1972, ("ETS Study, Phase III"), (4) Report on Analysis of the Police Trainee Examination in Relation to Ethnic Data, Raymond A. Katzell, (5) Interim Report on Research on Police Trainee Exam # 7046, (6) Research Study on the Examination for Police Trainee, # 7046, (7) A General Critique of Exam No. 7046, Drs. Banks and Brown, (8) Department of Personnel memorandum dated January 16, 1973 concerning examinations 7046 and 9080-9081 , and (9) memoranda and correspondence by and between the Department of Personnel and the NYCPD relating to the examination process. I have also read the transcript of the deposition of Mr. Solomon Wiener, Assistant Personnel Director for Examinations for the New York City Department of Personnel, taken by counsel for plaintiffs on December 19, 1972 and February 8, 1973.

3. In evaluating the materials referred to in the previous paragraph, I have compared the procedures used by the Department of Personnel with currently accepted professional test construction practice as embodied in the Guidelines on Employee Selection Procedures of the Equal Employment Opportunity Commission and the Standards for Education and Psychological Tests and Manuals of the American Psychological Association, to which the Guidelines refer as a primary source of professional standards in the field. Copies of those documents are annexed as Exhibits I and II hereto.

4. In my opinion, the procedures used by the

Department of Personnel to prepare, administer and grade and act upon examinations which I have reviewed and to otherwise test candidates for the positions of patrolman, sergeant, lieutenant and captain in the NYCPD do not meet accepted standards of sound professional practice in the selection testing field.

5. The first step in developing a valid selection procedure is to determine the purposes for which the procedure is to be used. It is not enough to assert that the examinations are designed to improve the quality of the work force. If a meaningful and valid test is to be developed, the goals of that test must be defined in detail. In particular, the employer requesting the examination must be specific in defining the kinds of poor performance (and poor performers) which the procedures are to exclude, or the good performance (and good performers) which the examinations are to encourage. For example, the Department of Personnel in conjunction with the NYCPD could reasonably ask such questions as: is it a significant problem in the NYCPD that patrolmen or superior officers cannot master the rules which govern their jobs; or is it a significant problem that they cannot perform under stress; or is it a significant problem that they have trouble in performing certain clerical tasks. There is nothing in the material I have reviewed which sets forth the goals of the NYCPD entry level and promotional exams in anything approaching meaningful detail. There is some indication that the fundamental purpose of the present tests is to serve as an arbitrary device to reduce the number of candidates applying for the positions to fit the available openings. Such an arbitrary goal is clearly inconsistent with proper test

preparation.

6. The second essential step in the preparation of proper selection procedures is the performance of a job analysis in order to determine what the incumbent actually does on the job, the relative importance of his various functions, the kinds and levels of the attitudes, knowledges and skills that are required, the kinds of behavior that lead to success or failure on the job, and the level of performance on significant aspects of the job that is necessary for the successful maintenance of the organization's functions. The resulting job description should consider the variations which exist in the job and the possibility for advancement within the ranks. It is virtually impossible to create a valid examination unless a job analysis and a job description have been done.

7. None of the documents which I have reviewed contain an adequate job description for an entry level or promotional examination. The brief job descriptions contained in the notices of examination prepared by the Department of Personnel are not acceptable. The material in these notices is at best cursory and is of no use to the individual actually responsible for preparing the examination.

The official description of the duties and assignments of police officers set forth in the Rules and Procedures of the NYCPD or the New York City Police Department Manual, copies of which I have reviewed generally, do not constitute an adequate job description for developing tests. They are concerned primarily with procedures which define the domain in which the patrolman or patrolwoman, or officer performs, but they give little insight into what he does, why he does it, and what types and level of skills and

knowledge are required. It is clear to me from a review of Mr. Wiener's testimony on the subject that the report of the Educational Testing Service prepared for the Department of Personnel was quite right in concluding:

> "Insofar as the E.T.S. staff has been able to determine the New York City Department of Personnel has not conducted any systematic analysis of the three superior officer grades [sergeant, lieutenant and captain]; nor have the examiners made use of other detailed job descriptions, if any do, in fact, exist in the Police Department or elsewhere in the governmental structure of New York City." (ETS Study, Phase I, p. VI-4)

8. I also concur with the statement in that same report to the effect that:

> "An essential first step toward improving the quality and the content validity of the police promotional tests lies in the preparation of up-to-date specifications based on detailed job descriptions. As far as the E.T.S. staff was able to determine, such descriptions do not exist at the present time." (Ibid., p. VI-7)

Both the quoted statements appear to be true with respect to NYCPD entry level as well as promotional exams.

9. The test plans prepared by the Department of Personnel for the entry and promotion examinations provide only a listing of the general areas in which questions are to be written, and the number of questions required for each area. An adequate test plan also includes a definition of the function to be measured, and an indication of the level of difficulty to be sought. Considerable detail is required to define psychological constructs with enough accuracy so that the item writer has a clear guide to follow. I agree with the conclusion reached by the Educational Testing Service in their June 1970 report that these test plans "provide an inadequate basis for sound test development". (ETS Study, Phase I, p. VI-4)

AFFIDAVIT OF RICHARD S. BARRETT READ
IN SUPPORT OF ORDER TO SHOW CAUSE

10. The next step in the creation of a proper test--once the job analysis has been completed and studied to determine exactly what the incumbents do, and what personal characteristics are necessary to learn and perform properly on the job--is to develop a selection procedure which measures these characteristics as accurately as possible. Tests, interviews, background investigations and any other selection devices that are used should be conceived and developed as an integrated whole and be designed to provide a maximum of relevant information so that proper selections can be assured. The NYCPD entry level and promotional examinations which I have examined emphasize intellectual functioning of dubious value for the purpose of selecting qualified patrolmen and promoting qualified patrolmen, sergeants and lieutenants to higher positions. These examinations emphasize the recognition of material from published sources, knowledge of specifics from the NYCPD rules and regulations, and estoeric abilities to visualize spatial relations, to engage in highly specific types of reasoning and to perform arithmetic calculations of doubtful relevance. My examination of the Manual and Rules and Procedures shows virtually no activity of the patrolman or officers which require the ability to visualize spatial relations or perform any but the most rudimentary arithmetic operations.

11. Once an examination has been developed, it should undergo validation studies to determine its relevance to the task at hand, in this case, identifying potentially more effective patrolmen or officers. The psychological profession recognizes three types of validity, "criterion-

related validity", "content validity" and "construct validity" for determining the adequacy or validity of an examination, of which criterion-related validity is the most appropriate measure to use for the validation of entry level and promotional examinations.

Criterion-Related Validity

12. Criterion-related validity involves many technical elements but in essence a test can be said to have criterion-related validity if it is shown that those who score high on the examination perform better on the job than those who score low. The Guidelines, § 1607.4(c) state, "Evidence of a test's validity should consist of empirical data demonstrating that the test is predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the job or jobs for which the candidates are being evaluated." Mr. Wiener concedes that no criterion-related or predictive validity study has been completed for any NYCPD entry level or promotional examination (Wiener Deposition, p. 63-64).

13. A basic step in establishing criterion-related validity is to determine just what constitutes good performance on the job. So far as I am able to determine, this step has not been taken by defendants. No fair and logical selection and promotion procedures can be established or validated in the absence of detailed criteria as to what constitutes good performance on the job.

Content Validity

14. Content validity exists when it can be shown through careful analysis of the job and the examination that the examination is a sample of work behavior required by the

job (e.g. a typing test may be content valid for a job which requires a large volume of typing), or is a direct sample of knowledge required for successful performance (e.g. a test for medical knowledge may have content validity for licensing a physician). Content validity is an inappropriate measure to judge the validity of an examination for the selection of patrolmen because all new appointees are immediately placed in a training program to impart to them the skills and knowledge required on the job. Content validity is appropriate for promotional examinations only where it can be shown that the test measures aspects of the present job which are common to, and important to, the next level job. In addition, the claim of content validity cannot be supported without a job analysis or detailed job description giving the examination preparer adequate information upon which to select questions representing a reasonable sample of the work required for the job. As previously mentioned, I have seen no such job description or detailed job analysis done in connection with the preparation of any of the NYCPD entry level or promotional examinations.

15. On the basis of the documents I have reviewed it cannot properly be said that a study of content validity has been performed by either the NYCPD or the Department of Personnel in connection with the development of any entry level or promotional examination.

Construct Validity

16. Construct validity exists when it can be shown that the test is an adequate measure of some psychological construct, such as spatial visualization, vocabulary, verbal reasoning, or arithmetic and that the construct is logically related to job performance. To show that a test has construct validity it is necessary to define the construct,

build the measure, show that the new measure is empirically related to other measures of the same construct, and show that in other ways the test is psychometrically defensible. The documents from the Department of Personnel show that no study involving construct validity has been done, but even if they had, construct validity would be of no value unless it could also be shown that the construct was required, in the degree measured by the test, for performance on the job. As the APA Standards point out in reference to construct validity, "It must be remembered, however, that, without a study or criterion-related validity, tests developed for diagnosis or prediction can be regarded only as experimental." Since no criterion-related validity study has been done even if the examinations were shown to have construct validity they would not have been properly validated.

17. The Guidelines further require that separate validity studies be conducted for minority groups to ascertain whether the examinations are accurate predictors of future performance for each group--i.e., whether they have "differential validity." No such study has been done by the Department of Personnel or the NYCPD to determine if the entry level or promotional examinations have differential validity.

18. Although criterion-related validity is the preferable measure of an examination's effectiveness, it cannot be required where it is not technically feasible. The major reason for finding criterion-related validity studies unfeasible is a lack of a large enough number of subjects to achieve statistically reliable results. In the pool of candidates for the NYCPD there are enough Black and Hispanic subjects for such a study and, given the present state of the art, it is possible to develop procedures to assure that entry level and promotional

examinations have criterion-related validity.

19. Based upon my review of the documents previously referred to and the procedures used to prepare, administer and grade the entry level and promotional examinations, I have reached the following conclusions: (1) these examinations were not prepared in accordance with accepted and professionally recognized test construction techniques and procedure, (2) none of the entry level and promotional examinations which I have reviewed have been properly validated to assure that they test for the qualities necessary to become a satisfactory patrolman, sergeant, lieutenant or captain, as the case may be, and (3) given the present state of the art, it would be possible to create valid entry level and promotional examinations.

Richard S. Barrett

Sworn to before me this
day of March 1973

AFFIDAVIT OF FELIX E. SANTOS READ
IN SUPPORT OF ORDER TO SHOW CAUSE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- X

THE GUARDIANS ASSOCIATION, et al. :

Plaintiffs, : Civil Action No.

-against- :

CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK, et al. :

Defendants. :

- X

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

FELIX E. SANTOS, being duly sworn deposes and says:

1. I am a plaintiff and represent the class of Minority plaintiffs in the above entitled matter. I submit this affidavit in support of the Motion for Preliminary Injunction.

2. I am a police officer in the New York City Police Department. I was laid-off from that position on June 30, 1975. Had it not been for the discriminatory actions of the defendants in this matter, I would currently be employed on the force.

3. I took and failed two entry level examinations before passing the October, 1969, entry level examination #9080. I believe the earlier tests were in 1968 and 1969.

4. On #9080, I scored an 84. I took and passed the medical and physical examinations.

5. I was not called for the investigation until January, 1973. Because of the lengthy nature of the investigation which pried into every corner of my life including venereal diseases, the investigator held up my clearance for over a year. I was finally appointed in March, 1974.

AFFIDAVIT OF FELIX E. SANTOS READ
IN SUPPORT OF ORDER TO SHOW CAUSE

6. I was laid-off from the police force on June 30, 1975. Since that time I have been collecting unemployment insurance, but these benefits are due to cease in one week. Without these benefits I will be unable to support myself, since no employers will hire me as a laid-off police officer. I am now 31 and too old to even apply for other civil service police related jobs.

7. I would not have been laid-off if it were not for the discriminatory entry level examinations of the defendants. If these examinations were based on merit, I would have been appointed from my first examination in 1968.

FELIX E. SANTOS

Sworn to before me
this 9th day of April, 1976

NOTARY PUBLIC

RICHARD J. HILLER
Notary Public, State of New York
No. 6900975
Qualified in New York County
Commission Expires March 30, 197.

AFFIDAVIT OF OSWALDO PEREZ READ
IN SUPPORT OF ORDER TO SHOW CAUSE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- X

THE GUARDIANS ASSOCIATION, et al. :

Plaintiffs, : Civil Action No.

-against- :

CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK, et al. :

Defendants. :

- X

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

OSWALDO PEREZ, being duly sworn deposes and says:

I. I am a plaintiff and represent the class of Minority plaintiffs in the above entitled matter. I submit this affidavit in support of the Motion for Preliminary Injunction.

2. I am a probationary police officer in the New York City Police Department. I was laid-off from that position on June 30, 1975. Had it not been for the discriminatory actions of the defendants in this matter, I would currently be employed on the force.

3. I took and passed entry level examination #8108 for the position of Patrolman, Police Trainee, Police Department in January, 1969. I received notice of my passing score, 80, and list number, 3215, and a request to appear for a physical and medical examination for those positions.

4. I took and passed the physical and medical examinations; however, I was rejected for failing to meet the 5'7" height requirement. I was told that if at some later time I obtained the height of 5'7", I might be able to requalify for

AFFIDAVIT OF [illegible]
IN SUPPORT OF ORDER TO SHOW CAUSE

5. Because of my inability to obtain a position in the New York City Police Department, I volunteered for military service in August of 1970. I joined the United States Air Force and was trained as a Base Operations Personnel, Air Traffic Dispatcher. In September, 1973, I was given an honorable discharge from the Air Force.

6. Upon returning to New York City, I reported to the Department of Personnel to inform them that I had returned from military duty and to inquire into my status as an applicant for appointment to Police Department. I was told that I would have to take another medical examination and to report to the Police Department Investigation Unit.

7. After several months, I successfully completed the investigation process. Because the Department of Personnel allegedly "lost" my file, I was not scheduled for my medical examination until August, 1974.

8. I again passed the medical examination. This time, however, I was not disqualified because of height since the height requirement in the interim had been eliminated for the position of New York City Police Department Patrolman.

9. Finally, I was appointed to the Police Department in September, 1974, a year after my return from military duty.

10. My height has never disadvantaged me in the conduct of my duties. While a member of the Department, I received a

IN SUPPORT OF ORDER TO SHOW CAUSE

Meritorious Citation for rescuing a man from a building on fire. As a result, I was hospitalized for smoke inhalation.

11. On June 30, 1975, I was laid-off from the Police Department. Since that time I have been collecting unemployment insurance. However, those benefits are due to cease on April 21, 1976. Without these benefits I will be unable to support my wife and two children.

12. If it had not been for the discriminatory 5'7" height requirement, I would not have had to be laid-off from the Police Department since I would have been appointed sometime May, 1970.

SWALDO PEREZ

Sworn to before me this
th day of April, 1976

Notary Public

RICHARD J. HILLER
Notary Public, State of New York
No. 6900975
Qualified in New York County
Commission Expires March 30, 197

NOTICE OF CROSS MOTION TO DISMISS COMPLAINT

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

THE GUARDIANS ASSOCIATION OF THE NEW YORK CITY POLICE DEPARTMENT, INC., et al., Plaintiffs,	76 Civ. 1982
-against-	NOTICE OF CROSS MOTION TO DISMISS COMPLAINT
CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK, et al., Defendants.	

MOTION BY:	Defendants
Date, Time and Place of Motion:	May 12, 1976 at 10 a.m. in the United States Courthouse, Foley Square, before Robert L. Carter, District Judge
Relief Demanded:	An order denying the application for preliminary relief and dismissing the action on the ground that (1) the court lacks subject matter jurisdiction of the alleged violations Title VII of the Civil Rights Act of 1964; (2) that the claims for relief under 42 USC 1983 are time barred; (3) that the claims for relief under Title VII are time barred because (i) subsequent application of the provisions of a neutral date-of-hire seniority system cannot turn an otherwise barred discriminatory hiring claim into a "continuing violation"; (ii) even if such application is itself considered to be a discriminatory act a charge with respect thereto must be brought within the statutory period immediately following the assignment of the complainant's place in that seniority system; (4) the action is barred by laches; and (5) the class action cannot be maintained because there is no individual plaintiffs with standing to challenge the height requirements formerly maintained by the Police Department.

NOTICE OF CROSS MOTION TO DISMISS COMPLAINT

Supporting Papers: Affidavits of Rosemary Carroll, Henry Cettina, James M. Sullivan and John P. Lowe and all the papers and proceedings heretofore had herein.

Respectfully submitted,

W. BERNARD RICHLAND
Corporation Counsel
Attorney for Defendants
Municipal Building
New York, N.Y. 10007
566-2183, 2192

By Rosemary Carroll
ROSEMARY CARROLL
Assistant Corporation Counsel

Dated: May 11, 1976
New York, N. Y.

TO: CLERK OF THE COURT

AFFIDAVIT OF ROSEMARY CARROLL IN SUPPORT OF DEFENDANTS CROSS MOTION TO DISMISS

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

THE GUARDIANS ASSOCIATION OF THE NEW YORK CITY POLICE DEPARTMENT, INC., et al., Plaintiffs,	76 Civ. 1982
-against-	AFFIDAVIT
CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK, et al., Defendants.	

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

ROSEMARY CARROLL, being duly sworn, deposes and says:

1. I am an attorney in the office of W. Bernard Richland, Corporation Counsel of the City of New York, attorney for the defendants herein and being familiar with the facts and circumstances as set forth hereinafter submit this affidavit in opposition to plaintiffs' application for a preliminary injunction and in support of defendants' cross-motion to dismiss the complaint.

2. The history of the prior litigation, The Guardians Association of the New York City Police Department, et al v. Civil Service Commission of the City of New York, et al., (72 Civ 928) is documented in the decision of Judge Ryan, the affirmance of the Second Circuit and the affidavit of defendants attorney, Paula J. Omansky, annexed hereto as Exhibits I,II and III.

AFFIDAVIT OF ROSEMARY CARROLL IN SUPPORT OF DEFENDANTS CROSS MOTION TO DISMISS

3. I have been informed by the New York City Police Department of the approximately 2800 police officers who have been laid-off and presently constitute the preferred list approximately 645 are minority applicants. Additionally of this number there are an as yet undisclosed number of persons who were appointed from other than lists incidental to Police Officer Examinations. Turning to the positions which will be affected should the relief plaintiffs seek, bumping be granted, there are 166 persons in the last 1000 senior positions in the Department held by minority members.

4. As has been previously brought to this Court's attention by defendants, any relief afforded plaintiffs in terms of re-ordering seniority cannot be final until the seniority dates of the plaintiffs in Acha v. Beame (75CIV 3128) are determined since only at that point can competitive seniority be finally determined.

5. As shown by the annexed affidavitsthe plaintiffs have failed to satisfy the requirements for granting injunctive relief. With regard to defendants contention that charges were not timely filed by plaintiffs with the EEOC,copies of the charges filed by plaintiffs Guardians and Hispanic Associations, dated June 16, 1975, are annexed hereto as Exhibit IV.

6. There is not allegation that the individual plaintiffs filed charges with the EEOC.

WHEREFORE, defendants respectfully request judgment denying the application for a preliminary injunction and dismmissing the complaint.

Rosemary Carroll

ROSEMARY CARROLL

Sworn to before me this
12th day of May, 1976

EXHIBIT I - DECISION OF RYAN, J.

THE GUARDIAN ASSOCIATION OF THE POLICE DEPARTMENT, INC., et al. v. CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK, et al.

Endorsement
72 Civ. 928

This motion for injunctive relief pendente lite is made some months after the filing of the complaint.

It is not in dispute that, of the City's approximately 29,500 police officers, 7 percent are black and 2 percent are of Puerto Rican or Hispanic origin.

I assume for the purpose of this motion that plaintiffs have made a prima facie showing of discrimination based on examination scores alone. There remains a factual issue as to the job-relatedness of the challenged examinations. The burden of establishing this issue of job-relatedness rests with the defendants. This is a factual issue to be resolved at trial and summary judgment cannot be granted [Chance v. Board of Examiners, 458 F.2d, 1167, 1175 (2d Cir., 1972)].

It affirmatively appears that all on existing lists, including minorities, will be appointed at the latest by early fall of 1973, and at that time, the existing lists will be depleted. The Police Commissioner's emergency schedule of appointments should not be halted or interrupted. It is the City's initial goal to appoint 3,150 new police men in the present fiscal year; 1750 remain to be recruited and the existing list of eligibles is down to about 2,000, of whom less than 1,000 may still be available, the rest having moved or taken other jobs.

The extreme emergency need for appointments to patrolman and for promotions to supervising officers in the Police Department is a matter of common knowledge and of grave public concern. The defendants are striving to meet this demand and, at the same time, set up new tests which would incorporate equal-employment requirements for minority applicants and meet E.E.O.C. Guidelines.

Affirmative steps are being taken by the City to meet the plaintiffs' objections to current examinations methods and to meet plaintiff's objection that present examinations have an asserted built-in bias which has kept qualified minority group applicants out of the Police Department for reasons unrelated to job performance. To the end that the future examinations be fair to all, the City has but recently made a contract with the Psychological Corporation of Manhattan to prepare new tests to be held before January 1, 1974.

When these new tests are promulgated, opportunity will be afforded plaintiffs to assert any objection they may have. There is clearly no basis for injunctive relief at this time.

The foregoing states my findings of fact and conclusion of law.

Motion is denied; so ordered.

Dated: July 12th, 1973.

Sylvester J. Ryan /s/
U.S.D.J.

EXHIBIT I

EXHIBIT II - DECISION OF U.S.C.A.-2ND CIRCUIT

UNITED STATES COURT OF APPEALS

For the Second Circuit

No. 241 - September Term, 1973

Argued September 14, 1973 Decided November 21, 1973

Docket No. 73-2083

THE GUARDIANS ASSOCIATION OF THE NEW YORK CITY POLICE DEPARTMENT, INC., THE HISPANIC SOCIETY OF THE NEW YORK CITY POLICE DEPARTMENT, INC., et al.,

Plaintiffs-Appellants,

v.

CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK, et al.,

Defendants-Appellees,

-and-

PATROLMEN'S BENEVOLENT ASSOCIATION, et al.,

Intervenor-Defendants-Appellees.

Before LUMBARD, FRIENDLY and FEINBERG, Circuit Judges.

Appeal from an order of the District Court for the Southern District of New York, Sylvester J. Ryan, Judge, denying a preliminary injunction in a civil rights action by minority groups challenging the examination procedures for entrance to the New York City police force. Affirmed, with instructions.

Christopher Crowley, Esq., New York, N. Y. (Jack, Greenberg, Esq., Elizabeth [illegible] DuBois, [illegible], [illegible] Kenneth Kimerling, Esq., [illegible] Counsel), for Plaintiffs-Appellants

EXHIBIT II

FPI-Randstone
3-19-73—10M—1048

Paula J. Omansky, Esq., New York, New York (Norman Redlich, Corporation Counsel, City of New York, and Frances E. Loren, Esq., of Counsel) for Defendants-Appellees.

Phillips, Nizer, Benjamin, Krim & Ballon, Esqs., New York, N. Y. (Stuart Linnick, Esq., of Counsel) and Kaye, Scholer, Fierman, Hays & Handler, Esqs., New York, N.Y. (Seymour Goldstein, Esq., of Counsel), for Intervenors-Defendants-Appellees.

FPI-(Jan.-Feb.)-6
3-19-73—1003M—1006

FRIENDLY, Circuit Judge:

Like Vulcan Society v. Civil Service Comm'n, this day decided, this action was brought in the District Court for the Southern District of New York under the Civil Rights Act, 42 U.S.C. § 1983 and its jurisdictional implementation, 28 U.S.C. § 1343(3). Plaintiffs here are two organizations representing black and Hispanic members of the New York City Police Department, several minority policemen who have unsuccessfully sought promotion, and several minority applicants who have been denied appointment to the force. The defendants are the Civil Service Commission of the City of New York, the City's Department of Personnel, the Police Department, individual civil service commissioners, and former Police Commissioner Murphy, hereafter referred to as the municipal defendants. Three police benevolent associations and various non-minority individuals awaiting promotion or appointment to the Department were permitted to intervene on the side of defendants. As in Vulcan Society, plaintiffs alleged that existing entry level and promotional examinations had a racially disproportionate impact, were improperly prepared, and were not job-related.

When the action was commenced on March 3, 1972, New York City was not hiring new policemen nor planning any new examinations. Since there appeared to be no urgency, it was agreed that the City would have the New York City Rand Institute (Rand) conduct a survey of the two most recent entry examinations, the second of which was held in 1970, to

determine their racial impact. This agreement was conditioned on plaintiffs' undertaking not to seek injunctive relief while the Rand study was underway and the job freeze remained in effect. In January 1973 the freeze was lifted, and the City resumed hiring policemen from the eligibility lists; interim results of the Rand survey became available shortly thereafter. At about the same time, the City announced plans for a new patrolman's examination, to be given before January 1, 1974.

Late in March, plaintiffs moved for a preliminary injunction against continued appointments from current eligibility lists and against the use of inadequate methods to prepare any future examinations. Before decision, the final version of the Rand Report became available and was submitted to the district court. The Report confirmed plaintiffs' contention that the entry examinations had had a racially disproportionate impact. Plaintiffs also submitted affidavits and the results of discovery tending to show that the past examinations were not job-related and that the new one might not cure the defects.

As to the past examinations, the municipal defendants did not answer on the merits, but argued that the eligibility lists from those tests would soon be exhausted and that the public interest required that new policemen continue to be appointed. As to the new examination, the defendants alleged that it would be prepared in compliance with the requirements of Title VII of the Civil Rights Act of 1964, 42

U.S.C. §§ 2000e - 2000e-17 now applicable to municipalities by virtue of 86 Stat. 103 (1972), and in accordance with the Equal Employment Opportunity Commission's Guidelines on Employee Selection Procedures, 29 C.F.R. §§ 1607.1 - 1607.14.[1]

On July 16, 1973, Judge Ryan denied the motion for a temporary injunction in a short opinion. He assumed that plaintiffs had made the showing of racially disproportionate impact needed to put upon the municipal defendants the burden of establishing the job-relatedness of the past examinations. Despite the defendants' failure to present any evidence on the subject, he thought that resolution of this factual issue should await trial on the merits.[2] What was decisive for him was that "It affirmatively appears that all on existing lists, including minorities, will be appointed at the latest by early fall of 1973, and at that time, the existing lists will be depleted." Judge Ryan also denied the plaintiffs' request for injunctive relief as to future examinations, finding that in view of the City's efforts to cure the alleged flaws in its past tests, there was "clearly no basis for injunctive relief at this time."

Plaintiffs promptly appealed. They sought from a judge of this court an injunction pending appeal and an expedited appeal. The former request was denied; the latter granted. We heard the appeal on September 14, 1973, but, because of its close relationship with that in Vulcan Society, determined to consider and decide the two cases together.

Defendants' argument that a preliminary injunction cannot be issued because they have not yet had an evidentiary hearing on the merits is misconceived. Although normally a court should hold some form of evidentiary hearing prior to issuing a preliminary injunction when there is a dispute concerning the facts, see SEC v. Frank, 388 F.2d 486, 490-93 (2 Cir. 1968); 7 Moore, Federal Practice ¶ 65.04[3], a defendant cannot block issuance of an injunction simply by refusing to submit evidence on contested fact issues. To be sure, very little may suffice; an affidavit of a competent expert would ordinarily be enough to call for an evidentiary hearing, such as Judge Weinfeld conducted in Vulcan Society, even on an application for interlocutory relief. See Ceruti, Inc. v. McCrory Corp., 438 F.2d 281, 284 (2 Cir. 1971); Carter-Wallace Pharmacal Co. v. Davis-Edwards Pharmacal Co., 443 F.2d 867, 872 n.5 (2 Cir. 1971). But here there was none.

Although we reject this basis for denying relief, we affirm the order of the district court on a different ground. Judge Ryan was confronted with a condition, not a theory. In contrast to Vulcan Society, where many blacks and Hispanics who passed the examination might be denied appointment because of their low grades in the absence of interim relief, here it appeared that all who passed the examinations were assured of rather speedy appointment. There would have been little use in the court's devoting days of much needed time to umpiring a battle of experts concerning the job-relatedness of examinations whose lists were expected to be approaching exhaustion.

An affidavit by Police Commissioner Cawley submitted in response to a request made by us at oral argument shows that the judge's expectations were well-founded. Existing lists will have been exhausted before this opinion is filed. Although a new examination will be held on December 15, 1973, the earliest possible date of appointments therefrom is June 1974. Meanwhile the only available sources of new policemen will be lists of the New York City Transit Authority and the New York City Housing Authority police, which the Civil Service Commission has made available, and even these may not be adequate. While the affidavit does not disclose the ethnic composition of the eligibles remaining on these lists, it appears that 59% of the "protective service workers" employed by the Housing Authority and 27% of the Transit Authority patrolmen are blacks or Hispanics. In view of all this we cannot say that the refusal to grant a temporary injunction against appointments from the old examination lists was an abuse of discretion.

The remaining issue is whether the court erred in not making directions with respect to the new examination. The affidavit of plaintiffs' expert alleged that defendants' admissions in discovery showed that they had not made proper job evaluations for the new examinations; that the new examination was being prepared on the basis of "rational validation" rather than predictive or concurrent validation;[3] and that the former is not acceptable under the EEOC Guidelines. The court dismissed this by saying that "When these

new tests are promulgated, opportunity will be afforded plaintiffs to assert any objection they have." Plaintiffs counter that it would be better to settle such matters before rather than after. Sharing the views expressed by Judge Coffin on a similar problem in Castro v. Beecher, 459 F.2d 725, 737-38 (1 Cir. 1972), we think the district court would have done well to direct that the municipal defendants should disclose the proposed examination to plaintiffs' counsel and expert, under an appropriate protective order, and afford them an opportunity to advance constructive criticisms, which the defendants should have carefully considered, without obligation to accept. We made that suggestion at argument. Although the time may now be too late, we think it desirable to instruct the district court to make such a direction now.

The order is affirmed with the instructions indicated above. The mandate shall issue forthwith. No costs.

FTI-Sandstone
3-10-73-10:34

1. In Griggs v. Duke Power Co., 401 U.S. 424, 433-34 (1971), the Supreme Court noted that the EEOC's Guidelines interpreting the Act according to the mandate of 42 U.S.C. § 2000e-12(a) were "entitled to great deference." However, Griggs does not require "compliance by every employer with each technical form of validation procedure set out in [the Guidelines]." United States v. Georgia Power Co., 474 F.2d 906, 913 (5 Cir. 1973). If the EEOC's interpretations go beyond congressional intent, the Guidelines must give way. See Hernandez v. Farah Manufacturing Co., 42 U.S.L.W. ____, ____ (U.S. Nov. 19, 1973).

2. Although plaintiffs had not requested it, the district court commented that summary judgment would not be proper without an evidentiary hearing. As a matter of principle, we cannot approve the intimation that under F.R.Civ.P. 56(e) defendants who are required to sustain the job-relatedness of examinations but fail to present any justifying material are nevertheless entitled to a trial. See Dressler v. M/V Sandpiper, 331 F.2d 130 (2 Cir. 1964); 6 Moore, Federal Practice ¶ 56.22[2] (1972).

3. As to this, see our opinion in Vulcan Society v. Civil Service Comm'n, slip opinions _____, _____.

Plaintiffs' attack on the defendants' proposed validation method provides a perfect illustration of the

pitfalls of judicial embroilment in the nomenclature of employment testing. The plaintiffs place great weight on their claim that "rational validation" is not among the methods of validation that enjoy professional acceptability. Yet it appears that at least among some experts "rational validation" is a generic term for "content" and "construct" validation, methods that are expressly approved in the EEOC Guidelines when establishing criterion-related validity through predictive or concurrent validation is not feasible. 29 C.F.R. § 1607.5(a). See Note, Employment Testing: The Aftermath of Griggs v. Duke Power Company, 72 Colum. L. Rev. 900, 913 (1972). See also Developments in the Law, Employment Discrimination and Title VII of the Civil Rights Act of 1964, 84 Harv. L. Rev. 1109, 1121-22 (1971); Johnson, A Second Look at Griggs v. Duke Power Company: Ruminations on Job Testing, Discrimination, and the Role of the Federal Courts, 58 Va. L. Rev. 844, 858-64 (1972).

EXHIBIT III - AFFIDAVIT OF PAULA OMANSKY FROM PRIOR ACTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE GUARDIANS ASSOCIATION OF THE NEW YORK CITY POLICE DEPARTMENT INC., THE HISPANIC SOCIETY OF THE NEW YORK CITY POLICE DEPARTMENT, INC., et al., Plaintiffs,	72 Civ. 928 (S.J.R.) AFFIDAVIT
- against-	
CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK, et al., Defendants.	

PAULA J. OMANSKY, being duly sworn deposes and says:

1. I am Executive Assistant Corporation Counsel and have been handling this matter since its inception in March 1972.

2. This affidavit is submitted in opposition to plaintiffs' application for an order to show cause permitting further discovery.

3. The City opposes further discovery on the ground that it is not in connection with the pending action, alleging discrimination in hiring. Rather it is directed to gathering sufficient information to support a different action, one alleging discrimination in lay-offs.

4. The above-captioned suit challenging the constitutionality of a series of entry level Policeman examinations was instituted by minority persons who alleged that they failed the examinations in questions or scored too low to be appointed. The relief sought, inter alia, was an injunction against using the lists for purposes of making appointments. Plaintiffs sought no relief affecting lay-offs.

EXHIBIT III - AFFIDAVIT OF PAULA OMANSKY FROM PRIOR ACTION

5. The Second Circuit affirmed this Court's denial of a preliminary injunction on the grounds of mootness: the existing police lists were exhausted and all qualified minority persons desiring appointment were offered that opportunity.

6. Following this decision, the City, in accordance with the representations made to this Court, prepared and administered a new entry level examination for policemen in accordance with professionally accepted standards of test preparation. This examination was not challenged either by persons in plaintiffs' putative class or by anyone else.

7. The pending action was not only moot legally but factually as well. William Roskin, Esq., General Counsel of the Department of Personnel advises me that Mark Austrian, Esq., an attorney for plaintiffs, told him that the case was "dead", although technically alive, and that he had no objection to Mr. Roskin's meeting with representatives of the Guardian's Association on matters relating to the promotion exams, also challenged in the pending action. This confirmed plaintiffs' own representations to City officials, when they sought the meeting, that the case was over.

8. In their application plaintiffs suggest that they are entitled to the same relief ordered in Acha v. Beame, Docket No. 75-7388, February 19, 1976) and Chance v Board of Examiners, Docket Nos. 75-7164, January 19, 1976). However, in those cases, discrimination was either proved following trial (Chance) or stipulated to for purposes of appeal (Acha). A finding of discrimination is a predicate for the relief plaintiffs hope to obtain, a restructuring of the recall lists providing for seniority for minority persons.

EXHIBIT III - AFFIDAVIT OF PAULA OMANSKY FROM PRIOR ACTION

Discrimination in cases such as these is proved by a finding that the challenged examinations were not in jact job related. This issue is moot. As the Second Circuit observed,

> "There would have been little use in the Court's devoting days of much needed time to umpiring a battle of experts concerning the job relatedness of examinations whose lists were expeeted to be approaching exhaustion.
>
> Guardians Association v. Civil Service Commission, 400 F. 2d 400, 404 (2d Cir. 1973).

Plaintiffs apparently read this to mean that they are entitled to a finding of discrimination in the absence of proof, a distortion of the Court's opinion.

9. Unsuccessful in the federal courts, plaintiffs have filed complaints with various federal agencies alleging discrimination in virtually every aspect of police employment, including hiring practices, transfers, promotions, and layoffs. Two such agencies are the Law Enforcement Assistance Administration and the Equal Employment Opportunity Commission. The LEAA is currently conducting an in-depth examination.

Accordingly, plaintiffs' application should be denied on the grounds that the discovery sought is for purposes of relief to which plaintiffs are not entitled without prosecuting the present action, and this action is moot.

Paula J. Omansky
Paula J. Omansky

Sworn to before me
this 25th day of March, 1976

Elliot B. Hoffman

Elliot B. Hoffman
Notary Public, State of New York
Qualified in Nassau County
Term Expires March 30, 1977

AFFIDAVIT OF JAMES SULLIVAN READ IN SUPPORT OF DEFENDANT'S MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE GUARDIANS ASSOCIATION, et al

Plaintiffs,

- against -

CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK, et al

Defendants.

76 Civ. 1982 (R.L.C.)

AFFIDAVIT IN SUPPORT OF DEFENDANTS MOTION

STATE OF NEW YORK)
: ss:
COUNTY OF NEW YORK)

JAMES M. SULLIVAN, being duly sworn, hereby deposes and says:

1. He is a member of the Police Department, City of New York, currently holding the rank of Deputy Chief, and presently assigned to the office of the Deputy Commissioner, Administration, which is the office responsible for budgeting. He has personal knowledge of the facts alleged herein.

2. He makes this affidavit in support of defendants' motion to dismiss and in opposition to plaintiffs motion for a preliminary injunction.

3. Over 90% of the expense budget of the Police Department goes toward payroll expenses and pension. Because of the fiscal crisis, the Department was required to reduce its expense budget which resulted in the lay-off of almost 3,000 police officers on June 30, 1975. The Department is currently compelled to restrict its expenses so as to live within a reduced budget. Non-personnel expenses have been cut substantially, but any real fiscal economies can only be made through personnel or payroll reductions. To avoid further layoffs, the Department has been mandated to accumulate vacancies through normal attrition. This has the effect of reducing the manpower of the Department, hence payroll expenses, so as to conform to budgetary needs. The normal attrition rate was projected a approximately 1200 positions per year. Further

AFFIDAVIT OF JAMES SULLIVAN READ
IN SUPPORT OF DEFENDANT'S MOTION

budget restraints were imposed in December, 1975, which increased the number of vacancies to be achieved during the fiscal year beyond the normal attrition rate. If the anticipated savings are not realized by attrition, and personnel expenses are the only viable means of achieving the necessary economies, the possibility of further personnel cutbacks in the next fiscal period is very real. Current statistics indicate that attrition may not alone produce the balanced budget.

4. Plaintiffs suggest that re-ordering of appointment dates and adjusting seniority will not cause "bumping", i.e., laying off present tenured employees to make room for the re-hiring of those plaintiffs whose re-adjusted seniority would take them out of the laid-off group. It is your deponent's understanding that the alternative suggested by the plaintiffs is that "front pay" be awarded from the date the order for the preliminary injunction is signed until the actual date of re-employment of the plaintiffs. This position is preposterous in that it would mean paying salaries of people who are not actually working. The budget is so delicately balanced at the present time that any significant increase in expenses must be offset by savings, and the only practical way of achieving such savings would be through further cutbacks in payroll to be accomplished by the additional elimination of positions.

5. The probable effect of granting the relief of "front pay" to plaintiffs would be to create a situation where further lay-offs of tenured police officers is unavoidable.

JAMES M. SULLIVAN

Sworn to before me this
11th day of May, 1976

AFFIDAVIT OF HENRY CETTINA READ IN SUPPORT OF DEFENDANT'S MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

THE GUARDIANS ASSOCIATION, et al.,

Plaintiffs,

- against -

CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK, et al.,

Defendants.

- x

76 Civ. 1982 (R.L.C.)

AFFIDAVIT IN SUPPORT OF DEFENDANTS MOTION

STATE OF NEW YORK)
: ss:
COUNTY OF NEW YORK)

HENRY E. CETTINA, being duly sworn, hereby deposes and says:

1. He is a member of the Police Department, City of New York, currently holding the rank of Captain, and presently assigned as Commanding Officer of the Department's Equal Employment Opportunity Office in the Personnel Bureau. He is familiar with the facts asserted herein.

2. He makes this affidavit in opposition to plaintiffs' application for a preliminary injunction and in support of defendants' motion to dismiss.

3. After the institution of a lawsuit by the Guardians Association in 1972, a study was undertaken by the Rand Institute with the cooperation of the Police Department and the Department of Personnel at a cost of $30,000. This study examined two police officer examinations and their impact on minority applicants.

4. Thereafter, the Department of Personnel contracted with Psychological Corporation, a private testing corporation, to conduct a job analysis of the position of police officer and to prepare an entry-level examination to that position, consistent with E.E.O.C. guidelines at a cost of $32,000.00.

AFFIDAVIT OF HENRY CETTINA READ
IN SUPPORT OF DEFENDANT'S MOTION

5. In conducting its job analysis, Psychological Corporation consulted with numerous members of the Police Department at all levels, including members of the Guardians Association and the Hispanic Society. The study identified the primary job activities and the requisite abilities and personal characteristics necessary to perform the duties of the position. The resulting test was devised to measure those attributes. The study and preparation of the examination occurred during the six months from April to December, 1973. The test, which was the first to eliminate a height requirement and to integrate male and female applicants, was administered on December 15, 1973.

6. As part of the effort to implement the recommendations of the Rand study and to increase the Department's endeavors to attract and recruit minorities, an intensive minority recruitment program was undertaken from August to December, 1973, at a cost of more than $500,000.00 in actual out-of-pocket expenses. The objective was to attract as many minority applicants as possible to file for the Unisex Police Officer examination (No. 3014), prepared by Psychological Corporation and offered on December 15, 1973.

7. From the inception of filing on September 6th through the final day for making applications, December 5th, more than one half million pre-application cards were printed and distributed. The Department of Personnel recorded 117,400 applicants during that period. On test day, December 15, 1973, approximately 46% or 53,363 candidates actually appeared for the examination. Among all test takers, 31% were Black, while 17% were Hispanic. Women, overall, comprised 26%.

8. The strategy employed to stimulate minority interest in the examination consisted of a media campaign, pre-examination instruction, and a "grass roots" appeal for candidates. In addition, a twenty four hour "hot-line" was established to counsel applicants and direct them to tutoring centers. The media effort included printing and distribution of more than 600,000 pieces of literature and numerous messages from elected officials to their constituents. For ten days prior to the written examination, an intensive reminder campaign via telephone, letters, and radio broadcasting was carried out.

9. Twenty-seven training centers were established throughout the City in areas having high minority populations to offer a free course of instruction in test preparation for examination candidates. Specially selected and trained police officers were used to carry out the fifty hour instructional program over two five-week cycles. Students used a 150 page manual developed specifically for this part of the recruitment program.

10. A special effort was made to recruit minority candidates through the churces and colleges in our City. At one point, some two hundred clergymen assembled at Police Headquarters where they were addressed by the Mayor and high ranking members of the Department. Recruitment teams were assigned exclusvely to work the campuses and clubs of local colleges. In similar fashion, numerous leaders in the minority community were approached and asked to lend their influence to the recruitment drive. (A complete account of the Minority Recruitment Program is attached as Exhibit A).

11. Police Department efforts specifically directed at the recruitment and retention of minority candidates for the uniformed service took on identifiable form in 1967, when a small recruitment squad was formed within its Personnel Bureau.

AFFIDAVIT OF HENRY CETTINA READ
IN SUPPORT OF DEFENDANT'S MOTION

Its work consisted principally of retrievals, i.e., actively seekout out and reinstating minorities who had dropped out of the selection process. From its inception, the unit's size had fluctuated, although its mission has remained stable, i.e., attracting candidates to the police service while making a determined effort to retrieve minority eligibles who have voluntarily dropped out of the selection process. The recruitment and retention staff has varied from four members to better than fifty.

12. Prior to 1973, both activities were somewhat muffled by a three year hiring freeze. Nonetheless, approximately 7,000 names and addresses were collected by recruitment squad members and held against the day when new examination filing would commence. At the same time, 250 minority candidates from seven eligible lists who had withdrawn or were dropped as being uncooperative, were actively sought out by squad members and eventually restored to eligibility.

13. New hirings from these lists resumed in January, 1973, and for that year, brought 398 black officers into the Department. This figure represented 13.3% of all appointments in this period. Hispanics accounted for 216 new members or 7.2% of total appointees.

14. For nine months in 1968-69, the Police Department took part in an extensive study of minority recruitment by the New York City Rand Institute. Specifically, the analysis sought to determine the reasons for difficulty in recruiting minorities; explore the effectiveness of strategies and programs for recruiting minorities; and devise new approaches to improve the representation of minority groups. The principal conclusion of the study, published in 1971, was that too few minority members were applying for police officer positions, and of those who successfully passed examinations, too many were dropping out of the selection

system before final appointment. Recommendations made by the study were subsequently implemented in the 1973 recruitment campaign.

15. A federally-funded (Model Cities Administation) "Community Service Officer" program was initiated in 1970. During fiscal 1975, there were approximately 1,000 persons (male and female) from Harlem, Bedford-Stuyvesant, and the South Bronx in the program and employed by the New York City Police Department. This program has seen 18 of its members appointed to this Department as Police Officers. On the current eligible list for Police Officer, 1973, (Exam. 3014), there are 166 Community Service Officers (C.S.O's), of whom 129 are black, while 37 are Hispanic.

16. A similar effort to encourage interest in law enforcement careers among minority youths consists of a cadet program which began in 1966 and continues today. Supported by federal funds under the Manpower Development Training Program, the Police Academy physically and academically prepares young men and women from the minority community to pass law enforcement entrance examinations. Since its inception, eight training cycles have been completed and more than 400 cadets have entered the Department as sworn police officers.

17. As a follow-up to the 1973 minority recruitment campaign, the Affirmative Action Section of the Equal Opportunity Unit of the New York City Police Department, made application for and received a $103,600.00 grant from the Law Enforcement Assistance Administration to support a program for ensuring the retention of those minorities candidates (male and female) who were successful on the written phase of the December 15, 1973 examination for police officer.

AFFIDAVIT OF HENRY CETTINA READ
IN SUPPORT OF DEFENDANT'S MOTION

-Minority eligibles are estimated at 27% black and 14% Hispanic on the current eligibles list (Exam No. 3014). Overall, approximately 27% of all candidates on the list are women.

-The grant contract specifically provides that the counselling services be for "minority" candidates (male and female).

-According to provisions of the grant, the major technique used is to personally counsel minority candidates through the medium of civilian counsellors who motivate and assist candidates, particularly in the necessary guidance for the preparation of their background questionaires.

-The program officially began when 17 counsellors (10 male and 7 female) were hired and then trained by personnel of the Department's Equal Employment Opportunity Unit (Affirmative Action Section).

-Under the direct supervision of personnel from the Department's Equal Employment Opportunity Unit, the 17 minority male and female counsellors reached and actively counselled over 2,200 minority candidates during fiscal 1975.

~~48.~~ 8 In October, 1974, a Pre-Employment Educational Preparation program was started to reduce the number of minority candidates who would otherwise be disqualified for failing to meet basic educational requirements, and to encourage continued education among the minority candidates.

~~49.~~ The Equal Employment Opportunity Office also maintains a continuing program in conjunction with the Community Affairs Division to recruit qualified candidates from minority areas. The objects are to develop a file of interested candidates who can be contacted and encouraged to participate in future entry level examinations.

AFFIDAVIT OF HENRY CETTINA READ
IN SUPPORT OF DEFENDANT'S MOTION

20. While planning for the 1973 minority recruitment program for Police Officers and the examination that followed, the city administration placed a high priority consideration on bi-lingual (Spanish-English) capability. In announcing the examination and throughout the recruitment campaign, emphasis was placed on special certification or preference for persons who could pass a supplemental oral examination in Spanish. All candidates were required to first pass the qualifying written examination, the results of which determined one's placement on an eligible list. A candidate who elected to take the Spanish oral could be selected out of numerical order according to personnel needs of the Police Department. Among the persons who placed in the first 20,000 eligibles, 2,732 persons elected to take the Spanish oral with the following results:

Number called to take Spanish oral exam	2,732
Number who failed to appear	1,284
Number who were examined	1,449
Number who passed	1,293
Number who failed	156

Twenty-eight persons who passed the Spanish oral examinations were appointed out of rank order on October 7, 1974 to meet Department personnel needs. Because of the fiscal crisis, only approximately 164 eligibles from the 1973 examination list (No. 3014) were appointed.

~~21.~~ In 1973 and 1974, having exhausted its police officer eligible lists and recognizing that the existing eligible lists from the city Transit Authority Police and Housing Authority Police contained large numbers of minority candidates, the New York City Police Department broke its traditional pattern of making appointments to its ranks only from its own eligible lists.

AFFIDAVIT OF HENRY CETTINA READ IN SUPPORT OF DEFENDANT'S MOTION

With the necessary approval from the city-wide Department of Personnel, the New York City Police Department then began to make appointments from the Transit and Housing Authority Police Officer eligibles list. From December, 1973, to June, 1974, a total of 781 appointments were made from these lists of which 208 (26.7%) were black and Hispanic. (141 or 18.1% were black; and 67, or 8.6% were Hispanic). 9

NEW YORK CITY POLICE DEPARTMENT APPOINTMENTS FROM TRANSIT AUTHORITY POLICE ELIGIBLE LISTS

Date Appointed	Total Hired	White	Black	Hispanic	A/A	A/I	O
12-17-73	138	109	17	11	1	0	0
3-25-74	154	128	19	7	0	0	0
6/26/74	307	223	51	33	0	0	0
TOTAL	599/100%	460/76.8%	87/14.5%	51/8.5%	1/0.2%	0	0

NEW YORK CITY POLICE DEPARTMENT APPOINTMENTS FROM HOUSING AUTHORITY POLICE ELIGIBLES LISTS

Date Appointed	Total Hired	White	Black	Hispanic	A/A	A/I	O
12-17-73	104	61	35	8	0	0	0
3-25-74	44	28	12	4	0	0	0
6-26-74	34	23	7	4	0	0	0
TOTAL	182/100%	112/61.5%	54/29.7%	16/8.8%	0	0	0
GRAND TOTAL	781/100%	572/73.4%	141/18.1%	67/8.6%	1	0	0

22. The Law Enforcement Cadet Program was begun in May, 1966, and is structured so as to enable the participants to obtain a high school equivalency certificate (if they do not already possess one). The program is directed to improve cadets' academic achievment levels. Driving lessons and instructions are also given to cadets who do not possess a license (this is a basic requirement for the job of Police Officer). Cadets are given further physical and other specialized training to enhance their probability of success on a number of civil service examinations, particularly in the law enforcement field.

AFFIDAVIT OF HENRY CETTINA READ
IN SUPPORT OF DEFENDANT'S MOTION

23. In preparing the Police Department's Equal Employment Opportunity Program for the fiscal year 1974 - 1975, your deponent caused a statistical analysis to be made of the available work force in the New York Standard Municipal Statistical Area. Statistics were obtained from reports published by the New York State Department of Labor and the United States Bureau of the Census. Since the basic qualifications for entrance into the Police Department as a Police Officer are age 20 to 29 years and completion of 12 years of schooling, figures for this group were isolated for comparison. The following is a summary of the statistical analysis:

Total Available Work Force (16 years and over)

Males	59.6%
Females	40.4%
Minorities	24.8%
Black	18.0%
Hispanic	6.8%

a. Total number of all males ages 20-29 with 12 or more years of education - 567,096

.Of that number, Blacks comprise 72,184 (12.7%)
.Of that number, Hispanics comprise 23,981 (4.2%)
.Of that number, Whites and others comprise 470,931 (83%).

b. Total number of females ages 20-29 with at least 12 years of education - 673,698.

.Of that number, Blacks comprise 104,858 (15.6%)
.Of that number, Hispanics comprise 31,056 (4.6%)
.Of that number, Whites and others comprise 537,784 (79.8%).

c. Combined totals of males and females, ages 20-29, with at least 12 years of education:

Males	567,096	M/Black	72,184	M/Hisp.	23,981
Females	673,698	F/Black	104,858	F/Hisp.	31,056
Total M/F	1,240,794	Total Black	177,042	Total Hisp.	55,037
Males = 45.7% Females= 54.3%		M/Black	=5.8% of total 20-29 pop.	M/Hisp.	= 1.9% of total 20-29 pop.
		F/Black	= 8.5% of total 20-29 pop.	F/Hisp.	= 2.5% of total 20-29 pop.

AFFIDAVIT OF HENRY CETTINA READ
IN SUPPORT OF DEFENDANT'S MOTION

Black M & F	= 14.3% of total 20-29 pop.	Hispanic M & F	= 4.4% of total 20-29 pop.

24. The minority composition of the uniform force of the Police Department on June 30, 1975, prior to the lay-offs, was 11.3%, comprised of 8.0% Black and 3.3% Hispanic.

HENRY E. CETTINA

Sworn to before me this
11th day of May, 1976

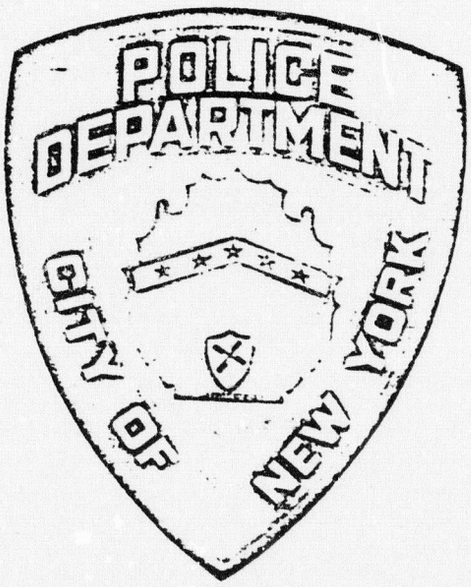
EXHIBIT A: MINORITY RECRUITMENT PROGRAM

N.Y.P.D.

Personnel Bureau

EEO PROGRAM

FY74 - 75



1973

MINORITY RECRUITMENT

CAMPAIGN

EXHIBIT "A"

EXHIBIT A: MINORITY RECRUITMENT PROGRAM

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EXHIBIT A: MINORITY RECRUITMENT PROGRAM

STAFF AND BASIC CAMPAIGN STRATEGY

In July 1975, a captain was detailed to act as Commanding Officer, Recruitment Unit and charged by the Police Commissioner with implementing an active recruitment effort. The unit was redesignated a Section and became a staff arm of the Police Personnel Director's office. Initial efforts centered on a search for funds while selecting, training, and assigning an appropriate staff. At its peak the personnel complement totaled:

1	Deputy Inspector
1	Lieutenant
5	Sergeants
31	Police Officers (2 Restricted Duty)
1	Management Intern
2	Police Administrative Aides
3	Typists

The Minority Recruitment Program was seen as one with long and short term goals, the most immediate being an intensive drive to recruit minorities for an entrance examination scheduled for December 15, 1975. Basic strategy consisted of the following:

a. identify the locations and institutions where large blocks of the target population could be reached;

b. commence a media campaign to include radio/TV messages, newspaper articles and supportive editorials, posters, handbills, and brochures;

c. initiate a series of mailings to college students, veterans and others;

d. design and construct a pre-examination preparation service;

e. set up a twenty-four hour "hot line" for receiving applications and counselling candidates;

f. develop a "grass roots" movement for recruiting minorities through the people and institutions with greatest influence in Black/Hispanic communities;

g. create satellite recruitment centers in precinct and City agencies with outreach in minority areas;

EXHIBIT A: MINORITY RECRUITMENT PROGRAM

h. concentrate heavily in the colleges and adult education centers to recruit minority candidates capable of scoring well on the examination without special preparation;

i. in the final month of the campaign, produce a second round of hard-hitting literature, mailings, and radio messages;

j. during the last ten days prior to exam date, conduct a telephone reminder drive to insure maximum minority turnout on exam date;

k. concurrent with all of the above, prepare a federal funding grant application for post-exam counselling and retention of successful minority candidates.

These strategies produced one of the largest filings ever seen for a civil service examination - 117,400 applicants - and resulted in 53,374 candidates actually taking the exam on December 15, 1973.

EXHIBIT A: MINORITY RECRUITMENT PROGRAM

MEDIA CAMPAIGN

The Police Commissioner sent letters to the publishers or general managers of 36 minority oriented newspapers, radio or television stations explaining the minority recruitment program and requesting their active support and involvement in this drive. A second round of such letters was sent midway through the campaign to encourage continued cooperation.

A total of 27 radio spots were recorded and produced by WNYC. These spots used the voices of police officers from the Recruitment Section, and were made available in both Spanish and English versions.

The Police Commissioner met personally with the Manhattan Borough President to garner his support and influence for extensive media coverage.

A number of well known personalities, including Dick Gregory, Godfrey Cambridge, Dick Barnett, Cal Ramsey, Herman Badillo, and Commissioner Cawley made special radio spots announcing the Police Examination.

Eight radio stations with substantial minority audiences were targeted for intensive follow-up campaigns which was essential in getting our spots played frequently and at times when large numbers of listeners in the target population were tuned in to the stations. This follow-up effort was, in large measure, responsible for the average of 29 spots each day which the target stations devoted to the recruitment campaign. The eight stations were: WBLS, WLIB, WWRL, WRNX, WADO, WRVR, WEVD, WHOM.

Two of the Spanish stations, WHOM and WADO produced 10,000 bumper stickers and buttons for the City's Hispanic community. These were distributed throughout the City.

Godfrey Cambridge produced, at no expense to the City, five video tape recruitment spots for television. These tapes, reproduced by WNYC, were distributed to eight TV stations for airing during minority oriented programs.

Station WXTV, Channel 41, broadcast four one-hour tutoring programs to prepare candidates for the Police Exam.

Teleprompter devoted five half-hour programs to the minority recruitment effort.

Large segments of minority oriented TV programs were devoted to the recruitment drive, including LIKE IT IS, BLACK PRIDE, BLACK NEWS, PUERTO RICAN NEW YORK, POSITIVELY BLACK.

EXHIBIT A: MINORITY RECRUITMENT PROGRAM

Special articles regarding the recruitment effort were published by a total of seventeen community newspapers in addition to the coverage the drive received in City-wide papers.

A minority recruitment ad prepared by the firm of Ogilvy and Mather was run free by ten community newspapers and eleven college student publications. The ad accented service and featured Black and Hispanic police officers.

In the first stage of our literature campaign more than 300,000 posters, handbills, brochures, and "fact sheets" were printed and sent throughout the minority community. Material for the second stage consisted of:

-17,000 11" x 28" size posters in English, plus 5,000 in Spanish (1,000 in buses):

-20,000 29" x 45" size posters in English and 5,000 in Spanish;

-300,000 bilingual handbills.

Countless other pieces of literature were printed and distributed by agencies and institutions supporting the drive.

Elected State and City officials representing minority areas responded to the Police Commissioner's request by circulating recruitment messages among their constituents.

For one month prior to test day, "sniping" teams of sergeants and police officers were formed and sent to strategic areas in the minority community where they saturated neighborhoods, shops, and community centers with campaign literature. Fences, walls, billboards, and store windows were covered with the large sign posters designed by Ogilvy and Mather.

EXHIBIT A: MINORITY RECRUITMENT PROGRAM

SPECIAL MAILINGS

Numerous recruitment mailings were made to potential minority candidates and those who had already applied. These included:

- approximately 80,000 letters announcing our tutorial program with class times and locations;
- 8,000 letters to a refined list of dropouts (minorities) from the City University system since 1971;
- another 8,000 letters went to C.U.N.Y students scheduled for graduation in June 1974; (large minority population);
- close to 40,000 mailings went out in the final two weeks prior to test day to minority candidates as an exam reminder;
- some 3,000 letters went to members of the Guardian and Hispanic societies to elicit their active support;
- approximately 4,000 letters went to persons on a list of minority veterans from the Vietnam war provided by the Mayor's Office for Veteran's Affairs;
- all of these were in addition to two rounds of letters sent by the Police Commissioner to the media and numerous other mailings to elected officials.

EXHIBIT A: MINORITY RECRUITMENT PROGRAM

PRE-EXAMINATION PREPARATION COURSE

A joint committee of police personnel from the Recruitment Section, Department of Personnel examiners, and training specialists from the Human Resources Administration developed a twenty-five hour course of instruction to prepare candidates for the exam.

Classes were conducted in two five week cycles of ten sessions each, which were attended by more than 5,000 students. Advance registration was not required and all materials were provided free of charge. The forty-three instructors were specially selected and trained police officers from the Guardian and Hispanic societies. The Police Commissioner authorized them to carry out this work while on duty.

The committee wrote a 150 page study manual for use by candidates enrolled in the tutoring program. Approximately 17,000 of these manuals were printed and distributed free of charge.

Twenty-four locations, predominately churches, PAL facilities, and City Manpower Centers, were selected for the tutoring program's first cycle which began on October 8, 1973. This was expanded to 27 locations for the second cycle which started on November 13th. With the exception of one site, all training centers were located in minority residential areas.

The Department of Personnel conducted an intensive three-day training session for the tutoring program's instructors. These instructors were evaluated during the training period and those who failed to qualify were dropped. In all, 90 police officers were involved in the special training of which forty-three were eventually selected to be program instructors.

Mayor Lindsay issued a press release announcing the start of the tutoring program on October 9, 1973.

City Hall aides monitored both cycles of the program providing written reports on the quality of instructors and offering some useful suggestions for improving the program.

Candidates for the Police Exam who required special remedial assistance in order to complete the test preparation course were given special instruction in English.

The Police Department printed special borough maps showing the locations of each tutoring center. These maps were distributed to all members of the Police Recruitment Committee (described below). See attachment for sample.

EXHIBIT A. MINORITY RECRUITMENT PROGRAM

A special trial exam was given to all students enrolled in either cycle of the tutoring program during the week of December 0[illegible].

EXHIBIT A: MINORITY RECRUITMENT PROGRAM

BROOKLYN CENTERS

NO.	LOCATION	PCT.	CONTACT PERSON	TEL #	START. DATE	DAYS OF OPERATION	TIME OF CLASSES
1.	Brownville Community Council 592 Rockaway Ave.	73	Mr. Farley	385-4606	Oct. 9	Tues&Thur.	6:30-9:30
2.	Manpower Center 245 Glenmore Ave	75	Ms. Williams	780-6461	Oct. 9	Tues & Thur.	7:00-9:30
3.	BED-STUY Restoration (St. Ambrose Church) 222 Thompkins Ave.	79	Mr. Rodriguez & Mr. Diaz	782-5500	Oct. 9	Tues.& Thur.	6:30-9:00
4.	Manpower Center 270 Flatbush Ave Extension	84	Mr. Smith	237-8595	Oct. 9	Tues & Thur.	7:00-9:30
5.	Manpower Center 815 Broadway	83	Mr. Johnson	491-3076	Oct. 9	Tues & Thur.	7:00-9:30
6.	Bushwick Community Center 50 Humboldt St	90	Mr. Bedford	453-3373	Oct. 9	Tues & Thur.	6:30-9:00
7.	BED-STUY Manpower Center 1249 Fulton St.	77	Ms. Bingham	789-4411	Oct. 9	Tues. & Thur	7:00-9:30

EXHIBIT A: MINORITY RECRUITMENT PROGRAM

POLICE DEPARTMENT
DEPARTMENT OF EMPLOYMENT
DEPARTMENT OF PERSONNEL

PRE-EXAM PREPARATION CENTERS

BROOKLYN

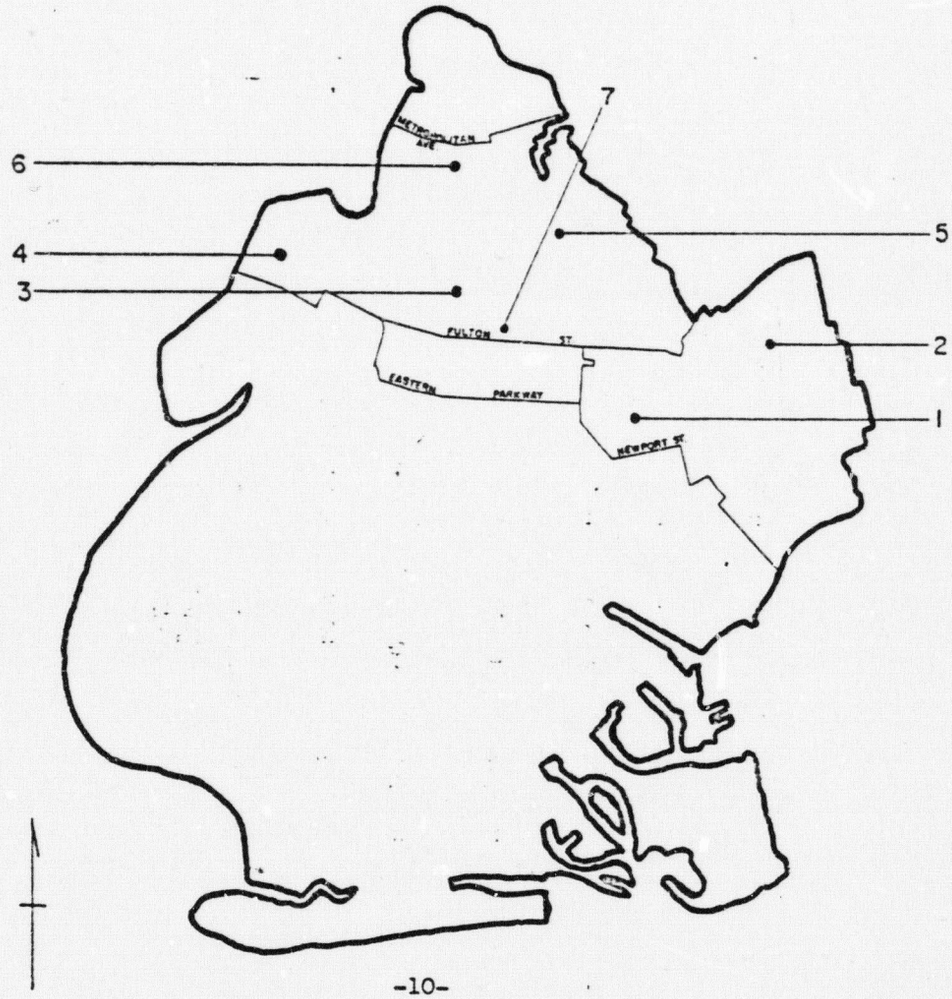


EXHIBIT A: MINORITY RECRUITMENT PROGRAM

BROOKLYN CENTERS

NO.	LOCATION	PCT.	CONTRACT PERSON	TEL. #	START. DATE	DAYS OF OPERATION	TIME OF CLASSES
1	Brownsville Community Council 592 Rockaway Ave.	73	Mr. Farley	385-4606	Oct. 9	Tues.&Thurs.	6:30-9:00PM
2	Manpower Center 245 Glenmore Ave.	75	Ms. Williams	780-6461	Oct. 9	Tues.&Thurs.	7:00-9:30PM
3	BED-STUY Restoration (St. Ambrose Church) 222 Thompkins Ave.	79	Mr. Rodriguez & Mr. Diaz	782-5500	Oct. 9	Tues.&Thurs.	6:30-9:00PM
4	Manpower Center 270 Flatbush Ave. Extension	84	Mr. Smith	237-8595	Oct. 9	Tues.&Thurs.	7:00-9:30PM
5	Manpower Center 815 Broadway	83	Mr. Johnson	491-3076	Oct. 9	Tues.&Thurs.	7:00-9:30PM
6	Bushwick Community Center 50 Humboldt St.	90	Mr. Bedford	453-3373	Oct. 9	Tues.&Thurs.	6:30-9:00PM
7	BED-STUY Manpower Center 1249 Fulton St.	77	Ms. Bingham	789-4411	Oct. 9	Tues.&Thurs.	7:00-9:30PM

EXHIBIT A: MINORITY RECRUITMENT PROGRAM

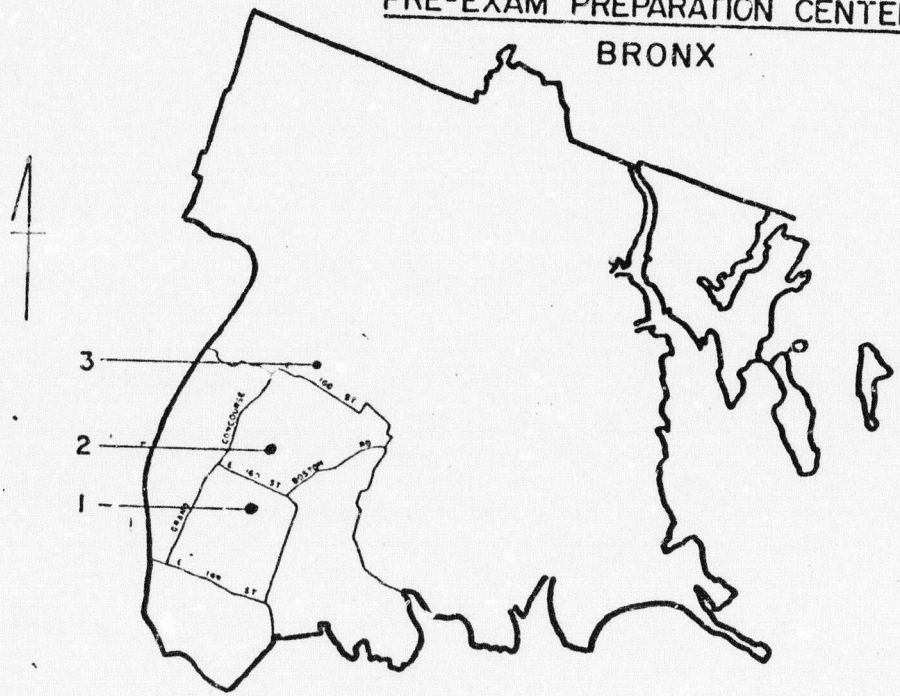
BRONX CENTERS

NO.	LOCATION	PCT.	CONTACT PERSON	TEL #	START. DATE	DAYS OF OPERATION	TIME OF CLASSES
1.	Model Cities 3164 Third Ave	42	Mr. Barrero	665-9611	Oct. 9	Tues & Thur	6:30-9:00
2.	Tremont Youth Council 1926 Crotona Parkway	48	Mr. McNair	589-4200	Oct. 8	Mon. & Wed.	6:30-9:00
3.	Bronx Comm. College 120 E. 184 Street	46	Mr. Alvarez	993-3500	Oct. 9	Tues & Thur	7:00-9:30

EXHIBIT A: MINORITY RECRUITMENT PROGRAM

POLICE DEPARTMENT
DEPARTMENT OF EMPLOYMENT
DEPARTMENT OF PERSONNEL

PRE-EXAM PREPARATION CENTERS
BRONX



SEE REVERSE
SIDE FOR DETAILS

PREPARED BY CARTOGRAPHY UNIT

EXHIBIT A: MINORITY RECRUITMENT PROGRAM

CHARGE OF DISCRIMINATION

EEOC CHARGE NO. TN75-1102 - TN75-1102

FORM APPROVED OMB NO. 124-R0001

INSTRUCTIONS

If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's District Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS THEREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE. *(Attach extra sheets of paper if necessary.)*

CAUSE OF DISCRIMINATION

- [x] RACE OR COLOR
- [x] SEX
- [ ] RELIGIOUS CREED
- [x] NATIONAL ORIGIN

NAME *(Indicate Mr. or Ms.)*: Mr James Harbour, Pres Guardians Assoc NYPD

DATE OF BIRTH: 9/4/39

STREET ADDRESS: 547 Marion St

COUNTY:

SOCIAL SECURITY NO.: 046-30-3845

CITY, STATE, AND ZIP CODE: Brooklyn NY

TELEPHONE NO. *(Include area code)*: 276-1006

THE FOLLOWING PERSON ALWAYS KNOWS WHERE TO CONTACT ME

NAME *(Indicate Mr. or Ms.)*: Mr Joseph Wiscovitch, Pres Hispanic Soc

TELEPHONE NO. *(Include area code)*:

STREET ADDRESS: PO Box 255

CITY, STATE, AND ZIP CODE: Congers NY

LIST THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT WHO DISCRIMINATED AGAINST YOU *(If more than one, list all)*

NAME: Police Department City of New York

TELEPHONE NO. *(Include area code)*: 374-[illegible]

STREET ADDRESS: 1 Police Plaza

CITY, STATE, AND ZIP CODE: NYC NY

OTHERS WHO DISCRIMINATED AGAINST YOU *(If any)*:

CHARGE FILED WITH STATE/LOCAL GOV'T. AGENCY: [ ] YES [x] NO

DATE FILED: 5/20/75

AGENCY CHARGE FILED WITH *(Name and address)*:

E.E.O.C. RECEIVED MAY 23 1975 N.Y. DIST. OFFICE

APPROXIMATE NO. OF EMPLOYEES/MEMBERS OF COMPANY OR UNION THIS CHARGE IS FILED AGAINST: More than 15

DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE *(Month, day, and year)*: Continuing

Explain what unfair thing was done to you and how other persons were treated differently. Understanding that this statement is for the use of the United States Equal Employment Opportunity Commission, I hereby certify:

Of the 135 Black Superior Officers in the NYCPD only (1) one is assigned as a Commanding officer. In the history of the NYPD No Black has ever commanded any unit other than a Pct or Boro.

Of the 54 Hispanic Superior Officers in the NYCPD only (2) two are assigned as Commanding officer.

The are well over two hundred such Commanding officers titles within the NYCP.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

DATE: 5/20/75

CHARGING PARTY *(Signature)*: James Harbour

Subscribed and sworn to before this EEOC representative.

DATE: 5/20/75

SIGNATURE AND TITLE: Edward Mercado

NOTARY PUBLIC

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE *(Day, month, and year)*

SIGNATURE *(If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the District Office. The Commission will notarize the charge for you at a later date.)*

EEOC FORM JUN 72 5 Previous editions of this form may be used.

GPO: 1974 O - 543-855

EXHIBIT A: MINORITY RECRUITMENT PROGRAM

(PLEASE PRINT OR TYPE)

CHARGE OF DISCRIMINATION

EEOC CHARGE NO. Amended TN7-51102

FORM APPROVED OMB NO. 124-R0001

INSTRUCTIONS

If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's District Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS THEREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE. *(Attach extra sheets of paper if necessary.)*

CAUSE OF DISCRIMINATION

- [X] RACE OR COLOR
- [ ] SEX
- [ ] RELIGIOUS CREED
- [X] NATIONAL ORIGIN

NAME *(Indicate Mr. or Ms.)* J. Wiscovitch, Pres. Hispanic Soc.
Mr. James Hargrove, Pres. Guardian Ass., NYPD

DATE OF BIRTH: August 4, 1939

STREET ADDRESS: 504 Marion Street

COUNTY:

SOCIAL SECURITY NO.: 090-30-3845

CITY, STATE, AND ZIP CODE: Brooklyn, New York

TELEPHONE NO. *(Include area code)*: 276-1006

THE FOLLOWING PERSON ALWAYS KNOWS WHERE TO CONTACT ME

NAME *(Indicate Mr. or Ms.)*: Mr. Joseph Wiscovitch, Pres. Hispanic Society

TELEPHONE NO. *(Include area code)*: 374-5300

STREET ADDRESS: P.O. Box 255

CITY, STATE, AND ZIP CODE: Congers, New York

LIST THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT WHO DISCRIMINATED AGAINST YOU *(If more than one, list all)*

NAME: Police Department, City of New York

TELEPHONE NO. *(Include area code)*: 374-5000

STREET ADDRESS: 1 Police Plaza

CITY, STATE, AND ZIP CODE: New York, N.Y.

OTHERS WHO DISCRIMINATED AGAINST YOU *(If any)*:

CHARGE FILED WITH STATE/LOCAL GOV'T. AGENCY: [ ] YES [X] NO

DATE FILED:

AGENCY CHARGE FILED WITH *(Name and address)*:

APPROXIMATE NO. OF EMPLOYEES/MEMBERS OF COMPANY OR UNION THIS CHARGE IS FILED AGAINST: More than 15

DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE *(Month, day, and year)*: Continuing

Explain what unfair thing was done to you and how other persons were treated differently. Understanding that this statement is for the use of the United States Equal Employment Opportunity Commission, I hereby certify:

There are at present, 135 Black superior officers in the New York City Police Department, with only one being assigned as a Commanding Officer.

There are at present 54 Hispanic superior officers in the New York City Police Department, with only two being assigned as Commanding Officers.

The New York City Police Department of the City of New York in its assignment of superior officers to Commanding Officer Titles, restricts the number of qualified minorities (Black and Hispanic) in violation of Title VII.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

DATE: 6/16/75

CHARGING PARTY (Signature) Joseph Wiscovitch, Hispanic Soc. / James Hargrove Pres. G.A.

Subscribed and sworn to before this EEOC representative.

DATE: 6/16/75

SIGNATURE AND TITLE: Robert C. Paul E.O.S.

NOTARY PUBLIC

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE *(Day, month, and year)*:

SIGNATURE *(If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the District Office. The Commission will notarize the charge for you at a later date.)*

EXHIBIT IV

EEOC FORM JUN 72 5 — Previous editions of this form may be used.

GPO: 1976 O - 525-555

EXHIBIT A: MINORITY RECRUITMENT PROGRAM

(PLEASE PRINT OR TYPE) TNY-5-1100

CHARGE OF DISCRIMINATION	EEOC CHARGE NO. AMENDED	FORM APPROVED OMB NO. 124-R0001

INSTRUCTIONS
If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's District Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS THEREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE. *(Attach extra sheets of paper if necessary.)*

CAUSE OF DISCRIMINATION
[X] RACE OR COLOR [ ] SEX
[ ] RELIGIOUS CREED
[ ] NATIONAL ORIGIN

NAME *(Indicate Mr. or Ms.)* James Hargrove, Pres. Guardians Assoc. NYPD	DATE OF BIRTH August 4, 1939
STREET ADDRESS 504 Marion Street / COUNTY Kings	SOCIAL SECURITY NO. 090-30-3845
CITY, STATE, AND ZIP CODE Brooklyn, New York	TELEPHONE NO. *(Include area code)* 212-276-1006

THE FOLLOWING PERSON ALWAYS KNOWS WHERE TO CONTACT ME

NAME *(Indicate Mr. or Ms.)* Howard Sheffey	TELEPHONE NO. *(Include area code)* 681-8898
STREET ADDRESS 16 East 169th Street	CITY, STATE, AND ZIP CODE Bronx, New York

LIST THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT WHO DISCRIMINATED AGAINST YOU *(If more than one, list all)*

NAME New York City Police Department	TELEPHONE NO. *(Include area code)* 374-5000
STREET ADDRESS 1 Police Plaza	CITY, STATE, AND ZIP CODE New York, N. Y. 10007

OTHER WHO DISCRIMINATED AGAINST YOU *(If any)*	New York City Department of Personnel 220 Church Street, New York, N. Y.
CHARGE FILED WITH STATE/LOCAL GOV'T. AGENCY [ ] YES [X] NO	DATE FILED / AGENCY CHARGE FILED WITH *(Name and address)*
APPROXIMATE NO. OF EMPLOYEES/MEMBERS OF COMPANY OR UNION THIS CHARGE IS FILED AGAINST: Over fifteen	DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE *(Month, day, and year)*: Continuing

Explain what unfair thing was done to you and how other persons were treated differently. Understanding that this statement is for the use of the United States Equal Employment Opportunity Commission, I hereby certify:

The Department of Personnel and the Police Department of the City of New York recently announced the termination of more than 1,000 Police Officers by July 1, 1975. There is less than 8% Blacks within the Police Department and the proposed terminations by rank order of seniority will cause more than 25% of those being terminated to be Blacks. This is being done although the City's total minority population of approximately 40%.

Such employment action by the above named Respondents although neutral on its face will have significant, discriminatory impact and effect on minorities (Black and Hispanic), in violation of Title VII of the Civil Rights Act on 1964, as amended.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

DATE	CHARGING PARTY *(Signature)*
6/16/75	Pres. Guardians Assoc. NYPD James Hargrove

Subscribed and sworn to before this EEOC representative.

DATE	SIGNATURE AND TITLE
6/16/75	Robert C. Paul E.O.S.

NOTARY PUBLIC

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE *(Day, month, and year)*

SIGNATURE *(If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the District Office. The Commission will notarize the charge for you at a later date.)*

EXHIBIT IV

EEOC FORM JUN 72 5 Previous editions of this form may be used.

GPO: 1974 O - 535-855

EXHIBIT A: MINORITY RECRUITMENT PROGRAM

INSTRUCTIONS

If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's District Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS THEREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE. *(Attach extra sheets of paper if necessary.)*

BASIS OF DISCRIMINATION

- [x] RACE OR COLOR
- [x] SEX
- [ ] RELIGIOUS CREED
- [x] NATIONAL ORIGIN

NAME *(Indicate Mr., Mrs., Miss)*: James Hargrove Pres. Guardians Assoc NYPD

DATE OF BIRTH: Aug 4 1939

STREET ADDRESS: 504 Marion St

COUNTY:

SOCIAL SECURITY NO.: 096 30 3815

CITY, STATE, AND ZIP CODE: Brooklyn NY 11233

TELEPHONE NO. *(Include area code)*: (212) 276-1006

THE FOLLOWING PERSON ALWAYS KNOWS WHERE TO CONTACT ME

NAME *(Indicate Mr., Mrs., Miss)*: Mr Howard Sheffey

TELEPHONE NO. *(Include area code)*: 681-8898

STREET ADDRESS: 16 E 129th St

CITY, STATE, AND ZIP CODE: Bronx NY

LIST THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT WHO DISCRIMINATED AGAINST YOU *(If more than one, list all)*

NAME: New York City Police Department

TELEPHONE NO. *(Include area code)*: 374-5000

STREET ADDRESS: 1 Police Plaza

CITY, STATE, AND ZIP CODE: NYC NY 10007

OTHERS WHO DISCRIMINATED AGAINST YOU *(If any)*: NYC Department of Personnel 220 Church St NYC NY

CHARGE FILED WITH STATE/LOCAL GOV'T. AGENCY: [ ] YES [x] NO

DATE FILED: 5/20/75

AGENCY CHARGE FILED WITH *(Name and address)*:

APPROXIMATE NO. OF EMPLOYEES/MEMBERS OF COMPANY OR UNION THIS CHARGE IS FILED AGAINST: over 15

DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE *(Month, day, and year)*: Cont'd

RECEIVED MAY 23 1975 EEOC N.Y. DISTRICT OFFICE

Explain what unfair thing was done to you and how other persons were treated differently. Understanding that this statement is for the use of the United States Equal Employment Opportunity Commission, I hereby certify:

The Department of Personnel and the Police Department both of the city of New York recently announced ~~the~~ upcoming firing of approx. 1,040 police officers by July 1, 1975.

There is currently less than 8% Blacks within the department, and it is expected that more than 25% of those to be fired are Black. This is being done although the city as a whole has a minority population of 37%.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

DATE: 5/20/75

CHARGING PARTY *(Signature)*: James Hargrove

Subscribed and sworn to before this EEOC representative.

DATE: 5/20/75

SIGNATURE AND TITLE: Edward Mercado

NOTARY PUBLIC

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE *(Day, month, and year)*

SIGNATURE *(If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the District Office. The Commission will notarize the charge for you at a later date.)*

EEOC FORM JUN 72 5 Previous editions of this form may be used.

GPO: 1974 O - 535-855

EXHIBIT A: MINORITY RECRUITMENT PROGRAM

BRONX CENTERS

NO.	LOCATION	PCT.	CONTACT PERSON	TEL. #	START. DATE	DAYS OF OPERATION	TIME OF CLASSES
1	Model Cities 3164 Third Ave.	42	Mr. Barrero	665-9611	Oct. 9	Tues.&Thurs.	6:30-9:00PM
2	Tremont Youth Council 1926 Crotona Parkway	48	Mr. McNair	589-4200	Oct. 8	Mon.&Wed.	6:30-9:00PM
3	Bronx Comm. College 120 East 184 St.	46	Mr. Alvarez	993-3500	Oct. 9	Tues.&Thurs.	7:00-9:30PM

EXHIBIT A: MINORITY RECRUITMENT PROGRAM

MANHATTAN CENTERS

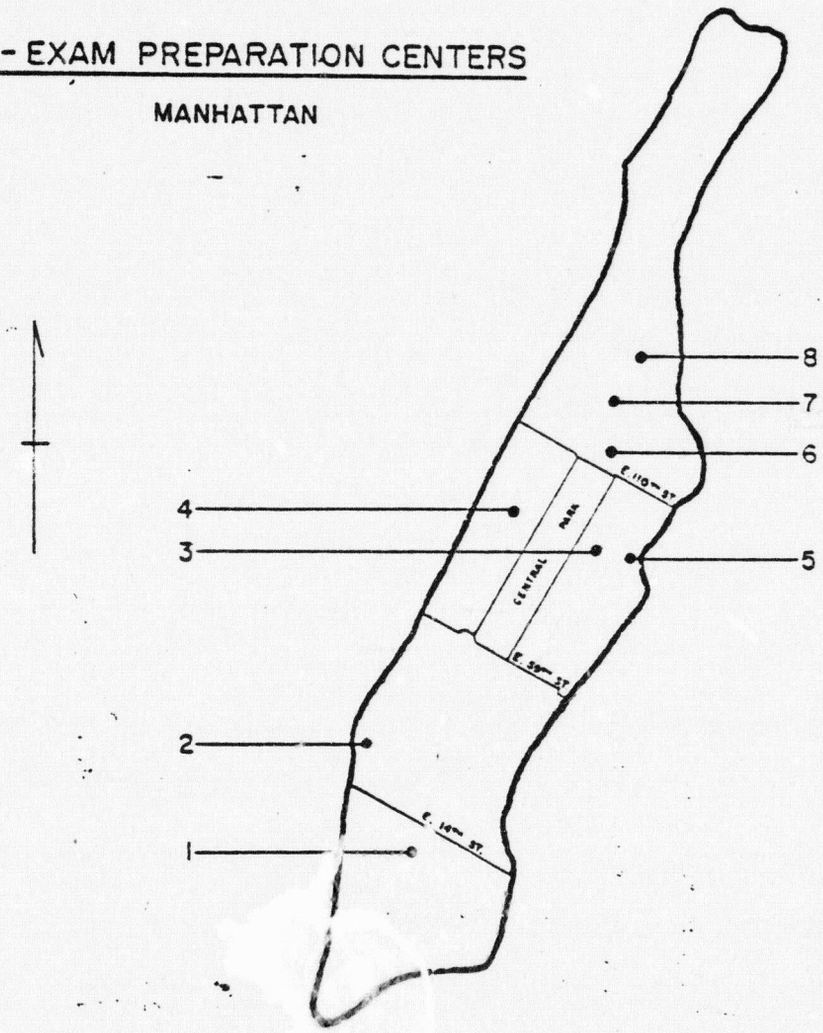
NO.	LOCATION	PCT.	CONTACT PERSON	TEL. #	START. DATE	DAYS OF OPERATION	TIME OF CLASSES
1.	Puerto Rican Forum 214 Mercer St	6	Mr. Rosario	533-0100	Oct. 9	Tues & Thur	6:30-9:0
2.	Manpower Center 226 W. 26th St	10	Mr. Kolker	620-9406	Oct. 9	Tues & Thur	7:00-9:3
3.	E. Harlem Community Corporation 103 E. 106 St	23	Mr. Rodriguez	427-0500	Oct. 9	Tues & Thur	6:30-9:0
4.	St. Gregory Church 144 W. 90th St	24	Father Manning	724-9766	Oct. 8	Mon & Wed.	6:30-9:0
5.	Manpower Center 118 E. 107 St	23	Mr. Lockman	360-8387	Oct. 9	Tues & Thur	7:00-9:3
6.	P.A.L. Center 259 W. 123 St	28	Mr. Jennings	749-1157	Oct. 8	Mon & Wed.	6:30-9:0
7.	Manpower Center 2090 7th Ave	28	Mr. Julien	662-4600	Oct. 9	Tues & Thur	7:00-9:3
8.	Harlem Hospital (Auditorium)	32	Mr. Friokin	621-4459	Oct. 9	Tues & Thur	6:30-9:0

EXHIBIT A: MINORITY RECRUITMENT PROGRAM

POLICE DEPARTMENT
DEPARTMENT OF EMPLOYMENT
DEPARTMENT OF PERSONNEL

PRE-EXAM PREPARATION CENTERS

MANHATTAN



SEE REVERSE SIDE FOR DETAILS

EXHIBIT A: MINORITY RECRUITMENT PROGRAM

MANHATTAN CENTERS

NO.	LOCATION	PCT.	CONTACT PERSON	TEL. #	START. DATE	DAYS OF OPERATION	TIME OF CLASSES
1	Puerto Rican Forum 214 Mercer St.	6	Mr. Rosario	533-0100	Oct. 9	Tues.&Thur.	6:30-9:00PM
2	Manpower Center 226 West 26 St.	10	Mr. Kolker	620-9406	Oct. 9	Tues.&Thurs.	7:00-9:30PM
3	East Harlem Community Corporation 103 East 106 St.	23	Mr. Rodriguez	427-0500	Oct. 9	Tues.&Thurs.	6:30-9:00PM
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6	P.A.L. Center 259 West 123 St.	28	Mr. Jennings	749-1157	Oct. 8	Mon. & Wed.	6:30-9:00PM
7	Manpower Center 2090 7th Avenue	28	Mr. Julien	662-4600	Oct. 9	Tues.&Thurs.	7:00-9:30PM
8	Harlem Hospital (Auditorium)	32	Mr. Friokin	621-4459	Oct. 9	Tues.&Thurs.	6:30-9:00PM

EXHIBIT A: MINORITY RECRUITMENT PROGRAM

QUEENS CENTERS

NO.	LOCATION	DIST.	CONTACT PERSON	TEL. #	START. DATE	DAYS OPERATION	TIME OF CLASSES
1.	Rochdale Village Community Center Room #22 169-55 137th Ave	103	Mr. Weinstein	276-5700	Oct. 9	Tues & Thur	6:30-9:00
2.	Manpower Center 88-83 Van Wyck Expressway	103	Ms. Turner	297-7000	Oct. 9	Tues & Thur	7:00-9:30
3.	Public Library 89-11 Merrick Boulevard	103	Mr. Solomita	739-1900	Oct. 9	Tues & Thur	6:30-9:00

EXHIBIT A:--MINORITY RECRUITMENT PROGRAM

POLICE DEPARTMENT
DEPARTMENT OF EMPLOYMENT
DEPARTMENT OF PERSONNEL

PRE-EXAM PREPARATION CENTERS
(QUEENS)

-16-

Prepared by Cartography Unit

SEE REVERSE
SIDE FOR DETAILS

EXHIBIT A: MINORITY RECRUITMENT PROGRAM

QUEENS CENTERS

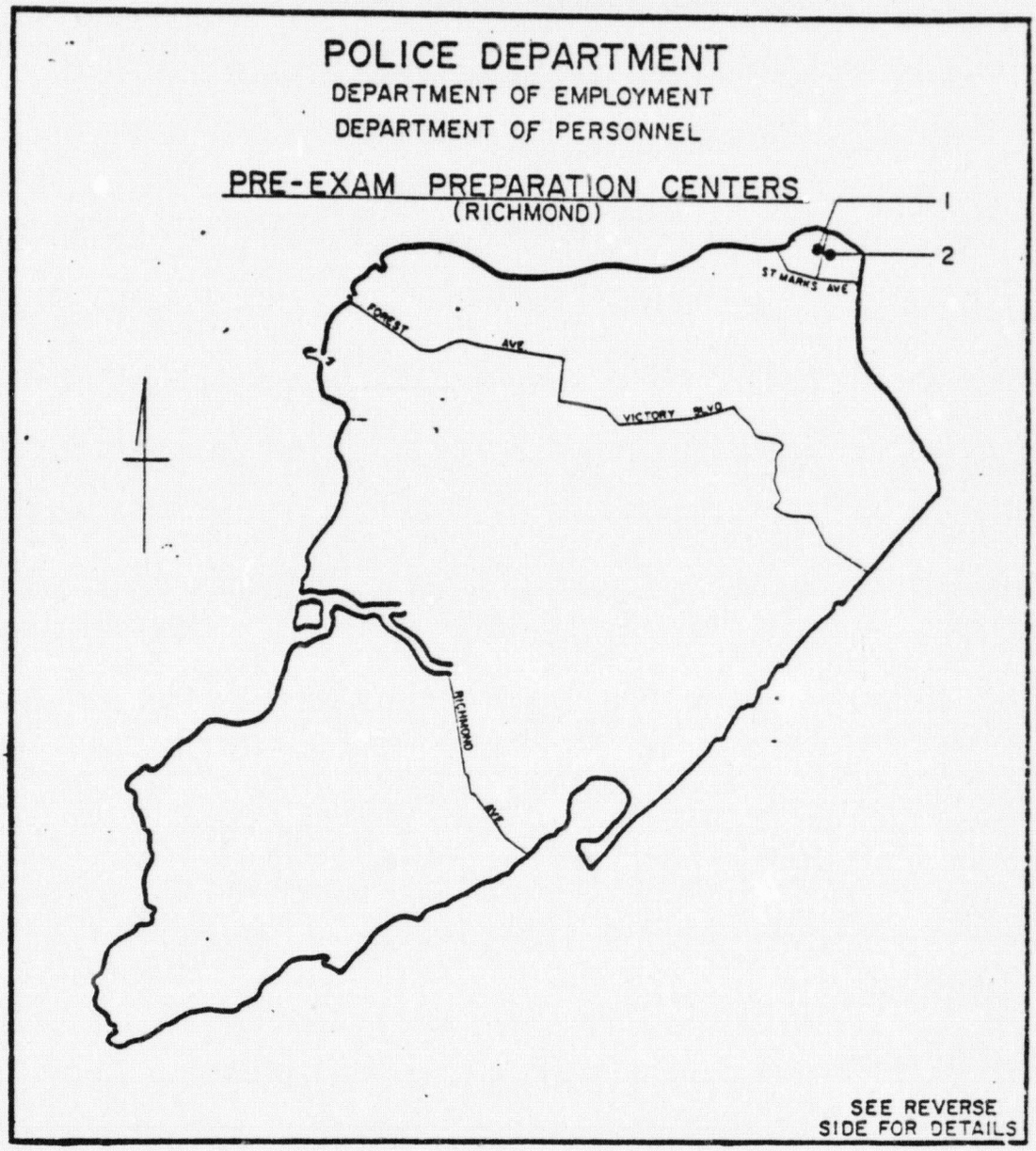
NO.	LOCATION	PCT.	CONTACT PERSON	TEL. #	STARTING DATE	DAYS OPERATION	TIME OF CLASSES
1	Rochdale Village Community Center Room #22 169-55 137th Ave.	103	Mr. Weinstein	276-5700	Oct. 9	Tues. & Thurs	6:30PM-9:00PM
2	Manpower Center 88-83 Van Wyck Expressway	103	Ms. Turner	297-7000	Oct. 9	Tues. & Thurs.	7:00-9:30PM
3	Public Library 89-11 Merrick Boulevard	103	Mr. Solomita	739-1900	Oct. 9	Tues. & Thurs.	6:30-9:00PM

EXHIBIT A: MINORITY RECRUITMENT PROGRAM

STATEN ISLAND CENTERS

PCT.	CONTACT PERSON	TEL. #	START. DATE	DAYS OF OPERATION	TIME OF CLASSES
120	Mr. Grady	273-2888	Oct 9	Tues & Thur	7:00-9:30 PM
120	Mr. Grade	273-2888	Oct.9	Tues & Thur	6:30-9:00 PM

EXHIBIT A: MINORITY RECRUITMENT PROGRAM



Prepared By Cartography Unit

EXHIBIT A: MINORITY RECRUITMENT PROGRAM

STATEN ISLAND CENTERS

NO.	LOCATION	PCT.	CONTACT PERSON	TEL. #	STARTING DATE	DAYS OF OPERATION	TIME OF CLASSES
1	Manpower Center 45 Wall Street	120	Mr. Grady	273-2838	Oct. 9	Tues. & Thurs.	7:00-9:30PM
2	Manpower Center	120	Mr. Grady	273-2838	Oct. 9	Tues. & Thurs.	6:30-9:00PM

NOTE: Two centers in same building

EXHIBIT A: MINORITY RECRUITMENT PROGRAM

POLICE RECRUITMENT COMMITTEE

Because so much had to be done in a short period of time, a special Police Recruitment Committee was formed with representatives from those City agencies having numerous local outlets in minority areas. The basic idea was to establish a network of satellite recruitment centers and personnel to supplement Recruitment Section work. Probably even more important was the fact that the people staffing these agencies had a high level of credibility and influence in the minority community. The Mayor's office, including his closest personal aides, took a direct interest in coordinating the committee's work; assistance which proved invaluable in making the system work. The Recruitment Section commander and his aides met personally with the leadership from each agency. Program objectives were explained; liaisons identified; and commitments obtained. This "grass roots" approach was a novel recruitment technique, which proved enormously successful.

Contributions of each agency are briefly described below:

Housing Authority

The Housing Authority and the Police Department distributed pre-application cards and police career literature to tenants during rent week in November and December.

Housing Authority managers were briefed on the minority recruitment program on October 25th at their annual meeting. The Chairman asked for the managers support in this effort and requested that they display recruitment posters and literature prominently in Housing Authority buildings.

The Mayor sent a letter to the Chairman of the New York City Housing Authority Resident Advisory Council explaining the recruitment campaign and requesting the active assistance of the council.

The Housing Authority prepared a list of major meetings in its projects. A speaker from the Recruitment Section was on hand for each of these meetings.

The Housing Authority devoted a substantial part of the October issue of the HA Journal to the recruitment drive. Over 172,000 copies of the Journal were distributed to HA tenants.

EXHIBIT A: MINORITY RECRUITMENT PROGRAM

CLERGY CONFERENCE

The Recruitment Section and Community Affairs Division collaborated on a Police-Clergy Conference for Minority Recruitment held October 24, 1973. Its specific objective was to enlist the support of religious leaders for our campaign to enroll minority candidates.

More than 400 clergymen serving Black and Hispanic communities were invited to attend the meeting via a letter from Mayor Lindsay.

In the first official event held in the new Headquarters auditorium, the assembled religious leadership was addressed by the Mayor, the Deputy Commissioners for Legal Matters and Community Affairs and the Chief of Operations.

Each clergyman received a supply of recruitment literature and was asked to display it in church facilities. They were also encouraged to use the pulpit for spreading the word.

All area commanders were present on the dais.

EXHIBIT A: MINORITY RECRUITMENT PROGRAM

Model Cities Administration

The Recruitment Section briefed all Model Cities area coordinators, as well as field workers, on the program and its goals.

All Model Cities offices distributed police career literature and pre-application cards.

Model Cities workers stuffed 50,000 flyers in mailboxes throughout the three Model Cities areas.

Model Cities acted as the PD liaison to the Bed-Stuy Restorations Corporation in securing its cooperation and support for the recruitment program. The Corporation consequently ran the Ogilvy and Mather newspaper ad in their publication and used its five centers to distribute police career literature, plus pre-application cards.

Model Cities, Central Brooklyn ran the Ogilvy and Mather ad in its newspapers throughout November.

Youth Services Agency

The Directors of YSA's 36 youth centers were briefed by the PD and served as recruiters for the effort. In addition, ALL workers in these centers were informed of the recruitment program by the center directors.

Board of Education

The Police Department scheduled speakers at each of the 75 evening centers operated by the Office of Career Education.

The Board of Education designated one individual at each career Education Center to serve as both liaison and recruiter for the Minority Recruitment Program. The Police Department held a full briefing for these recruiters.

The Board of Education made forty typists available to the Recruitment Section to aid in the numerous mailings of literature and letters.

EXHIBIT A: MINORITY RECRUITMENT PROGRAM

Mayor's Office For Veteran's Affairs

MOVA provided a list of minority veterans. The Recruitment Section of the Police Department sent a letter regarding police careers to each of these vets.

MOVA compiled a list of veterans meetings held throughout the City. The P.D. sent recruiting teams to these meetings.

MOVA outreach centers distributed literature concerning police careers and pre-applications.

Council Against Poverty

The Directors of each of the 26 Community Corporations appointed a liaison for the recruitment program. These liaisons were all fully briefed by the P.D. In addition, each of these Community Corporations and their 350 delegated agencies distributed police literature and pre-

Board of Higher Education

(Contribution described under college recruitment heading).

Unions

In addition to contributions by the City agencies mentioned above, District Council 37, a municipal employee's union of more than 100,000 workers (the great majority of whom are Black and Hispanic) ran a special police recruitment appeal in its own publication, the Public Employee Press.

Police Department

In addition to the Recruitment Section's work, substantial contributions of time, energy and personnel came from the Deputy Commissioner for Community Affairs; Deputy Commissioner for Legal Matters, and the Chief of Field Services. Community Relations Officers in each precinct were designated as local recruitment officers and fulfilled many speaking engagements. The Deputy Commissioner, Community Affairs conducted a series of weekend "Police Expos" in minority communities to attract exam candidates while Field Services Bureau made special efforts to maximize recruitment at the precinct level.

EXHIBIT A: MINORITY RECRUITMENT PROGRAM

Health Services Administration

Recruitment literature was distributed through Health Department centers throughout the City.

Posters and brochures were displayed in all mobile health examination vehicles.

Health inspectors and local workers were supplied with pre-application cards and encouraged to sign up minority candidates.

Office of Neighborhood Government

Lent advice and counsel in the development of a telephone campaign.

Served as an outlet for dissemination of recruitment literature in minority areas.

Lent the use of a trailer type vehicle as a mobile recruitment office.

Commission on Human Rights

Advised on the development of recruitment literature and pre-application cards.

Identified strategic geographic and employment areas where minority recruitment efforts could be focused.

EXHIBIT A - MINORITY RECRUITMENT PROGRAM
COLLEGE RECRUITMENT

A determined effort was made to recruit among Black and Hispanic students in local colleges. Greatest attention was focused on eleven campuses in the City University system with very high minority enrollment. Special college recruitment teams were formed within the Recruitment Section and supplemented by precinct personnel.

The Board of Higher Education made available a printout of all recent college dropouts which had been refined to include only those students who attended high schools with sizeable minority populations. A letter was sent to each of these dropouts urging them to consider a police career. (Approximately 8,000 total names).

A list of all recent graduates from our eleven target colleges was compiled by the Board of Higher Education and refined to include only minority students. A letter was sent to all students on this list. (Approximately 5,500 names).

Police Department recruiters held meetings with all minority clubs on our eleven target campuses.

Ogilvy and Mather prepared a 5" x 7" newspaper ad for the recruitment program. This ad was published by the college newspapers on ten of our eleven target campuses, often several times.

The Mayor sent a letter to the Presidents of our eleven target colleges requesting that they designate a liaison for the recruitment effort.

Once established, the liaisons arranged for recruitment literature displays on bulleting boards and in student lounge facilities.

Several meetings were held with directors of the College Discovery Program and placement counselors from the City University System. Goal: to encourage minority interest in a police career.

The Recruitment Section conducted special all-day recruitment programs on the eleven CUNY target campuses during October and again during November.

EXHIBIT A - MINORITY RECRUITMENT PROGRAM

LAST-MINUTE REMINDER CAMPAIGN

A critical element in campaign strategy involved reminders to minority candidates who had filed for the examination. Basic purposes were to lend encouragement to these who were wavering in their commitment to a police career and also to refresh memories about the test date; times; materials needed; etc.

In the ten days between the close of filing and December 15th (examination day) more than 70,000 telephone calls were made in an attempt to reach every minority candidate.

For this work, the City's Emergency Operations Center in the basement of the Supreme Court building was used.

Thirty Community Service Officers and ten Police Officers were used to man the telephones for eight hours each afternoon and evening (including Weekends) between December 4th and 14th.

A letter over the Police Commissioner's signature was sent each identified minority candidate during this period.

A special message, designed to complement the telephone effort, was taped by the Police Commissioner and broadcast on minority oriented radio stations during these same two weeks.

EXHIBIT A - MINORITY RECRUITMENT PROGRAM

MODIFICATIONS IN THE SELECTION PROCESS

Significant changes in the selection process itself were affected. Many were designed to include:

-The construction of an entrance examination, under contract with a professional testing firm, which was job-related and culturally unbiased (Department of Personnel supervised exam construction while the Police Department provided the finances and advice);

-Elimination of the height requirement;

-A single examination for men and women;

-A more realistic set of physical standards which were specific and keyed to job performance;

-Modification of medical standards so that greater discretion could be employed where performance would not be impeded;

-Initiation of legislation to amend maximum age requirements so that a broader base of selection could be realized;

-A petition to the Civil Service Commission to amend its rule which makes a petit larceny conviction an absolute bar to appointment as a police officer. Discretionary language was sought;

-Modification of Civil Service rules to permit greater administrative discretion in individual cases where absolute rejection factors would have barred review.

-Moving the planned exam date back to mid-December so that more time could be used to stimulate minority interest;

-Revision and simplification of P.A. 15 (Applicant Questionnaire) to reduce a major factor for minority attrition on prior eligible lists.

EXHIBIT A - MINORITY RECRUITMENT PROGRAM

MISCELLANEOUS EFFORTS

A twenty-four hour "hot line" was set up to counsel candidates and accept telephone pre-applications. The old headquarters number, CA 6-2000, with twenty tie lines was transferred to the Recruitment Section for this purpose. The number was broadcast repeatdly on minority radio stations and publicized in all campaign literature. Police Officers manned phones for two months prior to test date.

A recruitment message was flashed on the Yankee Stadium scoreboard during the Morgan State-Grambling College football game. This annual event drew better than 60,000 fans, primarily from the Black community. During the game, teams from the Recruitment Section distributed materials in the stands.

During the campaign period, recruitment teams were sent to all ethnic parades.

Support was solicited from the "One Hundred Black Men", an organization of business and governmental leaders. The group sent letters of incentive to its membership on behalf of the recruitment drive.

An ad hoc committee of the Police Department's fraternal organization leadership was formed to aid in the drive.

All one-half million pre-application cards were printed in English and Spanish.

Twenty-five percent of all campaign literature was bilingual.

The New York City Police Foundation arranged for a series of meetings with minority personalities in the sports, broadcasting, and political worlds. These sessions were held in the home of the late Doctor Arthur C. Logan, a renowned Black surgeon, where our recruitment efforts were outlined and their active support solicited. The Commanding Officer, Recruitment Section chaired these meetings which were also attended by the Deputy Commissioner Legal Matters and Deputy Commissioner of Community Affairs. The Police Reserve Association underwrote the cost of printing 100,000 pieces of campaign literature.

EXHIBIT A - MINORITY RECRUITMENT PROGRAM

IMPLEMENTATION OF RESEARCH RECOMMENDATIONS

In May of 1971, the New York City Rand Institute, a research institution, published its recommendations for attracting more minorities to the police service. Major recommendations and the degree to which they were implemented in the recent campaign are sketched below.

Recruitment ads should emphasize service:

The central theme of the entire campaign was sensitivity and service to the community. All literature, particularly posters, stressed assistance to the public or depicted officers actually helping people.

Any media appeal should feature minority officers:

Black and Hispanic officers served as the only models for photographs in campaign literature. All radio tapes were narrated by identified minority members of the Recruitment Section.

Salaries should be emphasized:

Although the service theme dominated all literature and media appeals, weekly and annual compensation for the police officer position was prominently displayed in brochures, flyers, and fact sheets.

Publicity should clearly indicate that a high school diploma is not needed to take the entrance exam:

This point was emphasized in all campaign efforts, viz.; that educational requirements referred to appointment date (which might be several years after the exam) thus allowing time to satisfy any deficiency.

The Police Department should establish an exam preparation course in minority communities:

As outlined above, the pre-exam preparation course constructed for the recent campaign went far beyond the Rand suggestion. Concisely, a 150 page manual was printed and distributed free of charge to 17,000 applicants; two 25 hour cycles of institution for 5,000 students were offered at 27 training centers located almost exclusively in minority communities; and all instruction was tendered by specially prepared Black and Hispanic police officers on Department time.

There should be community involvement in the recruitment effort:

A major component in campaign strategy consisted of a "grass roots" approach whereby City agencies and institutions with influence in the minority community were marshalled to actively support the recruitment drive. This factor is described in detail above.

One week before the exam, efforts should be made to remind candidates:

For ten days before the December 15th examination, an extensive reminder campaign was carried out. It consisted of telephone calls, letters, and radio broadcasts; all described above.

Efforts should be made to insure that minority candidates stay in the selection process after passing the written exam:

While the intensive recruitment campaign was under way for the December 15th test, a grant application for federal funds to support minority retention was submitted and approved. That program is reported extensively in Part II under " MINORITY COUNSELLING AND RETENTION PROGRAM."

EXHIBIT A - MINORITY RECRUITMENT PROGRAM

OUT OF POCKET EXPENSES

It is impossible to calculate accurately the total expenditures attached to the five month recruitment effort during the latter half of 1973. So much time, space, and material was contributed by so many people that the true cost will never be known. However, some examples of approximate out of pocket expenses are described below:

Literature (1st round) designed by the Police Department including flyers and posters----------	$10,000
Literature (2nd round) professionally designed by Ogilvy and Mather including posters in two sizes and in both Spanish and English, bilingual flyers, and bilingual newspaper ads----------	$16,000
Special literature printed by Model Cities-------	$10,000
Salaries of Police Officers used as tutors in exam preparation course----------	$46,750
Salaries for Police Department personnel assigned to the Recruitment Section for approximately six months including: 1 Deputy Inspector, 1 Lieutenant, 5 Sergeants, 31 Police Officers, 1 management intern, 2 administrative aids, three typist----------	$272,850
Printing of 500,000 bilingual pre-application cards----------	$5,000
Radio and television tapes----------	$4,000
Tutoring program manuals (17,000 copies)---------	$15,00
Postage for Police Department letters to all examination applicants----------	$30,000
Police Department telephone follow-up campaign---	$7,500
Salaries of 500 Police Officers, many on overtime for examination day duty----------	$50,000
TOTAL	$467,110

Note that these are only examples and do not include many other uncalculated expenses.

AFFIDAVIT OF JOHN P. LOWE READ IN SUPPORT OF DEFENDANT'S MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

THE GUARDIANS ASSOCIATION, et al,	:	
Plaintiff,	:	76 Civ. 1982 (R.L.C.)
- against -	:	
CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK, et al,	:	AFFIDAVIT IN SUPPORT OF DEFENDANT'S MOTION
Defendants.	:	

- -X

STATE OF NEW YORK)
: ss:
COUNTY OF NEW YORK)

JOHN P. LOWE, being duly sworn, hereby deposes and says:

1. He is a member of the Police Department of the City of New York, currently holding the rank of Deputy Inspector and presently assigned as the Executive Officer of the Employment Division in the Personnel Bureau of the Police Department. He was formerly Commanding Officer of the Applicant Investigation Section which is a sub-unit of the Employment Division.

2. He has read the complaint in the captioned action, as well as the affidavits in support of plaintiff's application for a preliminary injunction, including the affidavits of the representative plaintiffs, Oswaldo Perez and Felix Santos, he is familiar with the facts asserted herein, and he makes this affidavit in opposition to said application for preliminary injunction, and in support of the defendant's motion to dismiss.

3. Applicants for the position of Police Officer (formerly Patrolman) are required to file an application with the City Department of Personnel, after which they are notified of the particulars of a competitive written examination. The Notice of Examination, among other things, notifies the applicant of the general duties of the position sought, the minimum requirements for the position,

and a description of the qualifying tests that each applicant will be required to pass together with the standards to be applied. In addition to the statutory minimum age requirement for appointment to police officer of 21 years of age, and United States citizenship at time of appointment (New York City Administrative Code Section 434a-8.0), the minimum requirements contained in the Notice of Examination for examinations up to and including the 1970 entry-level Police Officer Examination, also included the following:

> "Applicants must not be less then 5 feet 7 inches (bare feet) in height and must approximate normal weight for height." (See Notices of Examination No. 8108 annexed as Exhibit "A" and No. 9080 annexed as Exhibit "B").

and -

> "At the time of appointment as a Probationary Patrolman, residence in New York City, or in Nassau, Westchester, Suffolk, Orange, Rockland or Putnam Counties is required." (Exhibits "A" and "B")

4. In addition to the competitive written examination, each applicant is required to pass qualifying physical and medical examinations as well as establish proof of good character (Exhibits "A" and "B")

5. In order that the Department may properly pass on the aforementioned qualifications, each candidate is required to complete comprehensive personal history and medical questionnaires. The information provided therein forms the basis for a thorough background investigation conducted by the Applicant Investigations Section of the Personnel Bureau (formerly the Police Academy Investigating Unit). This investigation includes verification of criminal record, employment, residence and general background investigation.

AFFIDAVIT OF JOHN P. LOWE READ
IN SUPPORT OF DEFENDANT'S MOTION

6. Plaintiff Oswaldo Perez was one of 17,992 applicants for Police Officer/Trainee Examination No. 8108, ow which 7,380 actually sat for the written examination given on January 18, 1969. Plaintiff Perez was then 18 years old and a senior in Samual Tilden High School, Brooklyn, New York, from which he graduated in June, 1969, with an academic diploma. The resulting eligible list was established on September 26, 1969, and Plaintiff Perez placed number 3,215 on said list, having achieved a written score of 80.0. At the time, the plaintiff was not quite 19 years of age. No. 3215 on the Trainee eligible list was reached on January 23, 1970, but plaintiff Perez had been determined by the Department of Personnel to have a basic medical disqualification and therefore not appointable at that time.

7. A hiring freeze was imposed on the Police Department by the City of New York on February 9, 1970 and lasted until January 29, 1973. Plaintiff Perez enlisted in the United States Air Force and served from August 27, 1970 to September 17, 1973. On December 28, 1973, he submitted his personal history questionnaire, and on February 20, 1974, he appeared for an interview and fingerprinting. During this time, the plaintiff had been residing in Dover, Delaware, and on August 6, 1974, he was advised by the Department of Personnel that he had been marked as "not qualified for failure to meet residence requirements". On September 6, 1974 plaintiff Perez submitted a statement indicating he had moved to Brooklyn, New York during April of 1974. On September 18, 1974, the Brocklyn residence was verified; on the same date, he was re-certified; and on September 27, 1974, he was appointed a Probationary Police Officer. At that time, he

was measured at 5'7 1/2" and therefore met the minimum height requirement for List No. 8108. He was granted retroactive seniority based on his military service to February 26, 1973, but his position of Probationary Police Officer continued. On June 30, 1975, when the lay-offs were effected, plaintiff Perez was a Probationary Police Officer which was the first class of position to be eliminated pursuant to Section 80 of the Civil Service Law.

8. Plaintiff Perez was appointed a Probationary Police Officer not because the height requirement was changed, but because by the time of his appointment he had grown to his full height and met the minimum standards.

9. Plaintiff Felix G. Santos was one of 17,700 applicants for Police Trainee/Patrolman Examination No. 9080, for which a total of 6,826 sat on October 25, 1969. Plaintiff Santos achieved a score of 89.0 (including veteran's preference of 5 points) which placed him number 1470 on the resulting list of 4,109 eligibles who passed. Since the plaintiff was 25 years old at the time the list was established on April 27, 1970, he was therefore not eligible as a Police Trainee. No appointments to the position of Police Officer (Patrolman) were made from this list until July 30, 1973. The character investigation of the plaintiff, complicated by a history of Juvenile Delinquency (Burglary), poor employment record and disciplinary proceedings in the military, was not completed until January 25, 1974, and he was appointed on March 25, 1974. During the pendency of the investigation, the plaintiff had also undergone a qualifying medical examination on July 5, 1973. He was originally placed on medical hold, but was cleared on July 27, 1973. He was examined again on March 4, 1974, after the completion of the

background investigation and prior to appointment, and found medically qualified. Because of the delay occasioned by the investigation, plaintiff Santos waived veteran's preference which changed his list number to 2469.5, which number had been reached by March 25, 1974.

10. Plaintiff Santos indicated on his personal history questionnaire that he had made no prior application for the position of patrolman and the delay in h is appointment from July 30, 1973 to March 25, 1974 was occasioned by the need to complete background investigation. Plaintiff Santos was born in the Dominican Republic and did not become a United States citizen until December 7, 1971 and therefore was statutorily unqualified for appointment prior to that time.

11. Certifications of candidates from eligible lists are made by the Department of Personnel and usually follow list order. The Department of Personnel may refuse to certify an eligible for appointment if the eligible is found not to possess the basic qualifications for appointment, e.g., age, citizenship, residence, medical disability. The Police Com missioner has the power to select one of three from the certified eligibles in list order, pursuant to Civil Service Rule No. 4.7.2. During the period immediately preceding and following the hiring freeze from February 9, 1970 to January 28, 1973, a tremendous volume of investigations was undertaken, and it was not uncommon for appointment to be delayed pending the completion of the investigation. For example, over 7,500 investigations were conducted by the Applicant Investigations Section in 1973 and over 9,300 in 1974. There were approximately 15,000 such investigations in 1969 and 1970. Some of the factors which cause delay in

the investigative process are: correspondence with other law enforcement agencies, including fingerprint checks; correspondence with employer, schools, military authorities and other sources of background information; correspondence with other governmental agencies verifying claims made by the applicant; production of documents required to verify information contained in the application; production of affidavits explaining circumstances or facts disclosed in the application or by investigation; clerical errors; personnel problems; and necessary review and re-investigation. In addition to investigative delays, other factors which may cause appointments to be made out of normal order from an eligible list are: medical holds pending confirmation of suspected disqualifications; absence or unlocatability of the applicant; erroneous claims of preference which must be verified; mistakes; and necessary reviews, re-examinations and reconsiderations.

12. As demonstrated by the foregoing, eligibles are often not appointed in strict conformity with their rank position on an eligible list. However, every qualified applicant on Lists Nos. 8108 and 9080 was eventually appointed to the Police Department.

13. To afford the plaintiffs the relief they seek through preliminary injunction would require the Police Department and the Department of Personnel to restructure not only the current "Preferred List", i.e., the list of officers already laid off, but to structure an additional seniority list to determine the relative positions of the plaintiff's alleged class. This would require a re-grading of all test scores of successful minority members and elevating those whose scores were below the median pass grade

for the particular examination to the median mark, re-computing the final grade, determining the date on which the person who attained the next lower score was appointed, inspecting the records of both the elevated minority member and the next lower majority member to establish whether any of the factors indicated above caused a delay in appointment, determine whether veteran's preference was used or declined in either case, and position the re-graded member accordingly. This procedure would cause significant relocations on preferred lists and seniority lists.

14. Abolition of positions (lay-offs) and the establishment of preferred lists pursuant to Sections 80 and 81 of the Civil Service Law does not affect the competitive seniority of the laid-off police officers. Preferred lists are established to last four years, and any period during which an employee is laid-off does not constitute a break in continuous service. Contractual seniority benefits endure as of the appointment date despite lapse in actual service caused by temporary lay-off. Pension benefits accrue during the laid-off period, and the affected employees will be afforded opportunities to opt to make up contributions missed during their absence when they are reappointed. No laid-off employee who is reappointed will lose relative seniority benefits vis-a-vis any other employee as a result of the lay-off.

JOHN P. LOWE

Sworn to before me this
11th day of May, 1976

EXHIBIT A-NOTICE OF EXAMINATION NO. 8108

THE CITY OF NEW YORK
DEPARTMENT OF PERSONNEL
CITY CIVIL SERVICE COMMISSION

NOTICE OF EXAMINATION

Note—The General Examination Regulations of this Department are printed here in full on the first Monday of each month.

No. 8108
POLICE TRAINEE (P.D.)
PATROLMAN (P.D.)

This examination is open only to men.

A single list will be established from this examination and appointments will be made to either Patrolman or Police Trainee (Police Department) depending on age.

Police Trainee is a trainee class of positions. A Police Trainee will receive a regular appointment as a Probationary Patrolman on reaching his 21st birthday, or as shortly thereafter as practicable, without taking any further written or physical tests, provided he has a satisfactory record as trainee and provided he passes a medical test identical to the one given to Patrolman candidates.

Salary, Vacancies and Benefits (Patrolman): The entrance salary is $7,932 per annum at present. Patrolmen receive increments of $221 at the end of their first year, $551 at the end of their second year and $679 at the end of their third year, in the Police Department. The salary reached through these increments is $9,383 per annum. In addition, there is an annual uniform allowance of $185, a holiday pay allowance of eleven days per year, a $180 contribution per man per year by the city to a welfare fund, and a $1 per day contribution per man by the city to an annuity fund. Vacancies occur from time to time.

Police Trainee (Police Department): The entrance salary is $4,000 per annum. There will be an increment of $240 per annum after each year of trainee service up to a maximum of four increments. There will be a considerable number of positions in the Police Department under this program.

Many benefits are, or may be, enjoyed by New York City employees. These benefits include generous annual leave, sick leave, membership in a liberal pension system, the Social Security System, a health insurance plan wholly paid for by The City of New York and the blood credit program.

Applications: *Filing Period* — Pre-application forms issued and received Monday through Friday from 9 a. m. to 5 p. m., except Thursday from 8:30 a. m. to 5:30 p. m., and Saturday from 9 a. m. to 12 noon, from November 25, 1968 through December 5, 1968.

Pre-application forms are obtainable free either by the applicant in person or by his representative at the Application Section of the Department of Personnel at 49 Thomas Street, New York, N. Y. 10013. They will also be mailed on request provided that the request to the above section and address is accompanied by a stamped (6 cents) self-addressed 9½-inch envelope for each application requested. All such mail requests must be postmarked not later than December 17, 1968. A pre-application form submitted by mail must be postmarked no later than the last day for receipt of pre-application forms.

Pre-application forms are also issued in person (but not received) at all branches of the public library systems in the various boroughs of New York City, Mount Vernon, New Rochelle, White Plains and Yonkers.

Regular applications will be issued and accepted for filing in person only at the time and place of the written test.

Date and Place of Test: The written test is expected to be held January 18, 1969. This date is tentative only and may be changed if circumstances so demand.

Promotion Opportunities: The Administrative Code provides that Sergeants shall be selected from among Patrolmen of the First Grade, Sergeants are eligible for promotion examination to Lieutenant; Lieutenants are eligible for promotion examination to Captain.

Time in service as a Police Trainee shall not be considered as service in the uniformed force for pension or retirement purposes, not in computing seniority in a promotion examination, nor in granting advancement in grade as a Patrolman.

Age Requirements (Patrolman): The Administrative Code provides that only persons shall be appointed Patrolman who shall be on the date of the written test less than 29 years of age; and the Public Officers Law provides that persons shall be at least 21 years of age at the time of appointment.

Exception: All persons who served in military duty, as defined in Section 243 of Military Law, subsequent to July 1, 1940, may deduct the length of time, not exceeding a total of six years, which they spent in such military duty from their actual age in determining their eligibility (Sub. 10a, Section 243, Military Law).

Police Trainee: Candidates must be at least 16 years of age on the date of the written test and at least 17 years of age at time of appointment.

At the time of investigation, applicants will be required to submit proof of date of birth by transcript of record of the Bureau of Vital Statistics or other satisfactory evidence. Any wilful misstatement may be cause for disqualification.

Minimum Requirements: At the time of appointment, (a) graduation from a four-year senior high school course, or (b) possession of a high school equivalency diploma, or (c) certification of having passed the New York State high school equivalency examination or (d) an acceptable G.E.D. certificate issued by the Armed Forces (a score of at least 35 on each of the five tests and overall score of 225 in the G.E.D. examination).

At the time of appointment applicants must be United States citizens.

Applicants must not be less than 5 feet 7 inches (bare feet) in height and must approximate normal weight for height. Required vision 20/30 in each eye separately, without glasses.

At the time of appointment as a Probationary Patrolman, residence in New York City, or in Nassau, Westchester, Suffolk, Orange, Rockland, or Putnam Counties is required. Also at the time of appointment as a Probationary Patrolman, possession of a valid New York State motor vehicle operator's license is required.

Proof of good character will be an absolute prerequisite to appointment. The following are among the factors which would ordinarily be cause for disqualification: (a) conviction of an offense, the nature of which indicates lack of good moral character or disposition toward violence or disorder; (b) repeated conviction of an offense, where such convictions indicate a disrespect for the law; (c) repeated discharge from employment where such discharges indicate poor performance or inability to adjust to discipline; (d) addiction to narcotics or excessive use of alcoholic beverages; (e) discharge from the Armed Forces other than the standard honorable discharge. In accordance with the provisions of the Administrative Code, persons convicted of a felony are not eligible for positions in the uniformed forces of the Police Department. In addition, the rules of the City Civil Service Commission provide that no person convicted of petit larceny, or who has been dishonorably discharged by the Armed Forces shall be examined, certified or appointed as a patrolman.

The Police Commissioner has the right to appoint one out of three on each certification.

The rules of the City Civil Service Commission provide that no name shall be certified more than three times to the same appointing officer for the same or similar position, unless at such officer's request.

Those appointed as Probationary Patrolman must serve a probationary period of one year.

A Police Trainee will not be considered a member of the uniformed force or a peace officer.

Duties of Patrolman: To perform general police duties in the various branches of the department; to perform all additional functions for the rank prescribed by relevant Laws, Rules and Procedures, orders or directives of the Police Department; and to perform special duties or assignments as directed by the Police Commissioner in his discretion.

Duties of Police Trainee: Following orientation and training at the Police Academy, performs, under direct supervision, routine non-law enforcement tasks in Police Headquarters or field units; performs related work.

Examples of Typical Tasks (Police Trainee): Assists precinct personnel in the preservation of records, documents, correspondence, reports, filing, typing, etc., assists precinct detectives in a clerical capacity; assists members of specialized units in their clerical tasks; operates switchboards.

Tests: Written, weight 100, 75% required.

The written test will be of the multiple-choice type and will be designed to test the candidates' intelligence, initiative, judgment and capacity to learn the work of a police trainee and a patrolman. It may include questions on police situations, reading comprehension, arithmetic reasoning and vocabulary.

Candidates who pass the written test will be required to pass a qualifying medical test and a qualifying physical test. No second opportunity will be given to candidates who fail the qualifying physical test; or who fail to appear for the qualifying physical test, except those on active military duty.

The physical test will be designed to test the strength, agility, and power of candidates. Candidates will take the physical tests at their own risk of injury, although every effort will be made to safeguard them. Medical examination will be required prior to the physical test and the Department of Personnel reserves the right to exclude from the physical test any candidate who is found medically unfit. Candidates will be required to achieve a minimum mark of 70% or higher on the physical test in order to qualify. Medical and physical requirements as posted on the Department of Personnel's Bulletin Board must be met.

Candidates shall be rejected for any deficiency, abnormality or disease that tends to impair health or fitness. Such causes for rejection include but are not limited to defective vision, heart and lung diseases, hernia, paralysis and defective hearing. A history of any psychoneurotic disorder may disqualify. Persons must be free from such physical or personal abnormalities or deformities as to speech and appearance as would handicap them in the performance of their duties as a Patrolman.

Candidates who fail to attain the pass mark set for any test, subject or part of the examination shall be deemed to have failed the examination and no further test, subject, or part of the examination shall be rated.

Candidates are warned to make full and complete statements on their application blanks and medical questionnaires. Misrepresentation is ground for disqualification.

The pertinent sections of the General Examination Regulations are also to be considered part of this notice.

DEPARTMENT OF PERSONNEL, SOLOMON HOLZMAN, Personnel Director; GEORGE HENNY, Jr., Secretary.

n25,d2

8108
filed 17,772
took 7,350
1/8/69

EXHIBIT "A"

EXHIBIT A-NOTICE OF EXAMINATION NO. 9080

This examination is open only to men.

A single list will be established from this examination and appointments will be made to either Patrolman or Police Trainee (Police Department) depending on age.

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Police Trainee (Police Department): The entrance salary is $4,000 per annum. There will be an increment of $240 per annum after each year of trainee service up to a maximum of four increments. There will be a considerable number of positions in the Police Department under this program.

Many benefits are, or may be enjoyed by New York City employees. These benefits include generous annual leave, sick leave, membership in a liberal pension system, the Social Security System, a health insurance plan wholly paid for by The City of New York and the blood credit program.

Applications: *Filing Period* — Pre-application forms issued and received Monday through Friday from 9 a. m. to 5 p. m., except Thursday from 8:30 a. m. to 5:30 p. m., and Saturday from 9 a. m. to 12 noon from September 4, 1969 through September 23, 1969.

Pre-application forms are obtainable free either by the applicant in person or by his representative at the Application Section of the Department of Personnel at 49 Thomas Street, New York, N. Y. 10013. They will also be mailed on request provided that the request to the above section and address is accompanied by a stamped (6 cents) self-addressed 9½-inch envelope for each application requested. All such mail requests must be postmarked not later than September 16, 1969. A pre-application form submitted by mail must be received no later than the last day for receipt of pre-application forms.

Pre-application forms are also issued in person (but not received) at all branches of the public library systems in the various boroughs of New York City, Mount Vernon, New Rochelle, White Plains and Yonkers.

Regular applications will be issued and accepted for filing in person only at the time and place of the written test.

Date and Place of Test: The written test is expected to be held October 25, 1969. This date is tentative only and may be changed if circumstances so demand.

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Exception: All persons who were engaged in military duty, as defined in Section 243 of the Military Law, subsequent to July 1, 1940, may deduct the length of time, not exceeding a total of six years, which they spent in such military duty from their actual age in determining their eligibility (Sub. 10a, Section 243, Military Law).

Police Trainee: Candidates must be at least 16 years of age on the date of the written test and at least 17 years of age at time of appointment.

At the time of investigation, applicants will be required to submit proof of date of birth by transcript of record of the Bureau of Vital Statistics or other satisfactory evidence. Any wilful misstatement may be cause for disqualification.

Minimum Requirements: At the time of appointment: (a) graduation from a four-year senior high school course, or (b) possession of an acceptable high school equivalency diploma or U.S. Armed Forces Institute G.E.D. certificate (a score of at least 35 on each of the five tests and a total score of at least 225 in the examination for the diploma or certificate); or (c) certification of having passed the above examination with these scores.

Applicants for Patrolman must be at least 5 feet 7 inches (bare feet) in height and must approximate normal weight for height. For appointment as Police Trainee, eligibles must meet this height requirement prior to appointment. Required vision 20/30 in each eye separately, without glasses.

At the time of appointment as a Probationary Patrolman, residence in New York City, or in Nassau, Westchester, Suffolk, Orange, Rockland, or Putnam Counties is required. Also at the time of appointment as a Probationary Patrolman, possession of a valid New York State motor vehicle operator's license is required.

Proof of good character will be an absolute prerequisite to appointment. The following are among the factors which would ordinarily be cause for disqualification: (a) conviction of an offense, the nature of which indicates lack of good moral character or disposition toward violence or disorder; (b) repeated conviction of an offense, where such convictions indicate a disrespect for the law; (c) repeated discharge from employment where such discharges indicate poor performance or inability to adjust to discipline; (d) addiction to narcotics or excessive use of alcoholic beverages; (e) discharge from the Armed Forces other than the standard honorable discharge. In accordance with the provisions of the Administrative Code, persons convicted of a felony are not eligible for positions in the uniformed forces of the Police Department. In addition, the rules of the City Civil Service Commission provide that no person convicted of petit larceny, or who has been dishonorably discharged by the Armed Forces shall be examined, certified or appointed as a patrolman.

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Duties of Patrolman: To perform general police duties in the various branches of the department; to perform all additional functions for the rank prescribed by relevant laws, Rules and Procedures, orders or directives of the Police Department; and to perform special duties or assignments as directed by the Police Commissioner in his discretion.

Duties of Police Trainee: Following orientation and training at the Police Academy, performs, under direct supervision, routine non-law enforcement tasks in Police Headquarters or field units; performs related work.

Examples of Typical Tasks (Police Trainee): Assists precinct personnel in the preparation of records, documents, correspondence, reports, filing, typing, etc., assists precinct detectives in a clerical capacity; assists members of specialized units in their clerical tasks; operates switchboards.

Tests: Written, weight 100, 75% required.

The written test will be of the multiple choice type and will be designed to test the candidates' intelligence, initiative, judgment and capacity to learn the work of a police trainee and a patrolman. It may include questions on police situations, reading comprehension, arithmetic reasoning and civic awareness.

Candidates who pass the written test will be required to pass a qualifying physical test. This qualifying physical test may start on November 17, 1969. No second opportunity will be given to candidates who fail the qualifying physical test; or who fail to appear for the qualifying physical test, except those on active military duty.

The physical test will be designed to test the strength, ability, and power of candidates in addition, the physical test for patrolman will include a test for height. Candidates will take the physical tests at their own risk of injury, although every effort will be made to safeguard them. Medical evidence to allow participation in the physical test may be required and the Department of Personnel reserves the right to exclude from the physical test any candidate who upon examination of such evidence is apparently medically unfit. Candidates will be required to achieve a minimum mark of 70% or higher on the physical test in order to qualify. Medical and Physical requirements as posted on the Department of Personnel's Bulletin Board must be met.

Candidates shall be rejected for any deficiency abnormality or disease that tends to impair health or fitness. Such causes for rejection include but are not limited to defective vision, heart and lung diseases, hernia, paralysis and defective hearing. A history of any psychoneurotic disorder may disqualify. Persons must be free from such physical or personal abnormalities or deformities as to speech and appearance as would handicap them in the performance of their duties as a Patrolman.

Candidates who fail to attain the pass mark set for any test, subject or part of the examination shall be deemed to have failed the examination and no further test, subject, or part of the examination shall be rated.

Candidates are warned to make full and complete statements on their application blanks and medical questionnaires. Misrepresentation is ground for disqualification.

9080
17,700 filed
6,806 appeared
4,107 passed
2,713 failed
4 withdrew
10/25/69

EXHIBIT "B"

AFFIDAVIT OF CHRISTOPHER CROWLEY READ IN SUPPORT OF ORDER TO SHOW CAUSE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

THE GUARDIANS ASSOCIATION OF THE NEW YORK CITY POLICE DEPARTMENT, INC., et al.,	:	76 Civ. 1982 (RLC)
Plaintiffs,	:	
-against-	:	AFFIDAVIT IN SUPPORT OF PLAINTIFFS' APPLICATION FOR A TEMPORARY RESTRAINING ORDER
CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK, et al.,	:	
Defendants.	:	

STATE OF NEW YORK)
:ss.:
COUNTY OF NEW YORK)

CHRISTOPHER CROWLEY, being duly sworn, says:

1. I am a member of the Bar of this Court and co-counsel for plaintiffs herein. I am fully familiar with the facts and circumstances of this case. I submit this affidavit in support of plaintiffs' motion for a temporary restraining order pursuant to Rule 65 of the Federal Rules of Civil Procedure.

2. My colleague, Sara Steinbock, received a telephone call this morning from Rosemary Carroll, counsel for defendants herein. Ms. Steinbock was advised that the City proposes to send out letters on July 8 to 60 laid-off policemen recalling them to active duty.

3. Upon hearing this information from Ms. Steinbock, who was in a deposition in another matter,

I telephoned the clerk of this Court to request an opportunity to be heard on a motion for a temporary restraining order. Upon being informed by a clerk of this Court that we could be heard at 2:00 P.M. today, I telephoned Miss Carroll again and informed her that there would be a hearing at that time on our application for a temporary restraining order to halt the proposed recall.

4. The original papers in this case ("Guardians II") were served on April 30, 1976. Since that time, plaintiffs have gone forward on the most expedited basis possible to make a prima facie showing that the challenged entry level examinations do in fact discriminate against minority applicants and that the tests were not prepared in accordance with accepted test preparation standards and were not validated in accordance with accepted validation standards. A prima facie case has been made, but plaintiffs' showing is incomplete because basic documents in the possession of defendants have not yet been produced. Additional testimony is expected to be offered by defendants in support of their examinations. When that testimony is complete, plaintiffs expect to offer additional testimony to rebut defendants' contentions.

5. We respectfully submit that sufficient showing has already been made to demonstrate the likelihood that plaintiffs will prevail in their motion for a preliminary injunction and for permanent relief. It is also clear, we submit, that a fundamental reordering of the existing appointment lists, which are based on discriminatory and invalid examinations, will be necessary

at that time. In particular, plaintiffs expect to be able to persuade the Court that the entry level examinations cannot legally be used to do more than show that applicants who passed those examinations are qualified for appointment so far as reading, writing and arithmetical skills are concerned. We believe that it will be possible to persuade the Court that any ranking of applicants based on these examinations violates federal constitutional and statutory requirements.

6. Plaintiffs will be irreparably injured by any interim appointments based on existing lists. Regardless of the number of minority members expected to be recalled as a first step, plaintiffs will be irreparably injured by the setting of the precedent that these lists can be used for recall purposes. Even if the recalled policemen are given only provisional appointments, plaintiffs will have an additional burden to show that whatever rights these recalled men may have should be set aside in the granting of final relief. This Court should not be compelled to establish such critical precedents at this stage in the proceedings unless there is an overwhelming need to make interim appointments. The City cannot show that there is any such need.

7. The proposal apparently is to hire 60 additional policemen. The total New York City Police Department has numbered as many as 30,000 men in recent years. It is inconceivable that the need to hire 60 more is so urgent that it cannot be put off a few weeks until the final adjudication of this matter. In a police

force as large as this it must be possible to reorder assignments to make men available for indispensable tasks.

8. Defendants imposed a job freeze for several years recently because of economic considerations. Obviously they can continue that freeze for a few weeks with respect to 60 additional men without suffering significant injury.

9. Plaintiffs respectfully submit that the effort to recall 60 policemen is in fact an improper effort to establish a precedent for future recalls, to grant quasi-vested rights in recalled men and to interfere with the orderly disposition of the issues raised by this litigation. That disposition could have been completed by now if defendants -- who were first called upon to litigate these same fact issues several years ago in Guardians I -- had made a more vigorous effort to mount a defense on the merits this spring and to respond to document demands. It is unconscionable that they should now confront the Court with a dubious emergency and attempt to force a more favorable de facto decision than they could expect to achieve in litigation. That they should attempt to do so on one day's telephone notice is frankly inexcusable.

10. Accordingly, plaintiffs ask that the temporary restraining order be granted enjoining the recalling of additional men at this time.

Christopher Crowley

Christopher Crowley

Sworn to before me this
7th day of July 1976.

Herbert W. Brauer

HERBERT W. BRAUER
Notary Public, State of New York
No. 31-5427285
Qualified in New York County
Commission Expires March 30, 1978

AFFIDAVIT OF ROSEMARY CARROLL
READ IN OPPOSITION TO T.R.O.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE GUARDIANS ASSOCIATION OF THE NEW YORK CITY POLICE DEPARTMENT, INC., et al., Plaintiffs, -against- CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK, et al., Defendants.	AFFIDAVIT IN OPPOSITION TO TEMPORARY RESTRAINING ORDER 76 Civ. 1982 (R.L.C.)

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

ROSEMARY CARROLL, being duly sworn, deposes and says:

1. I am an attorney in the office of W. BERNARD RICHLAND, Corporation Counsel of the City of New York, attorney for the defendants, and I submit this affidavit in opposition to plaintiffs' application for a temporary restraining order against hiring provisional employees by the New York City Police Department.

2. I have contacted Police Commission Codd who because of his official attendance at the St. Patrick's Day Parade, is unavailable to execute an affidavit. I have also contacted Deputy Commissioner of Legal Matters, Lorenzo Cassanova, and the Chief of Personnel, Simon Eisdorfer, and am informed by them that the Police Department is scheduled to hire 250 Police Officers at 8:00 A.M., March 18, 1977, in a provisional capacity. These employees have been previously advised that they are required to sign as a condition of employment a statement indicating that their employment is provisional and subject to the rights, if any, of persons who have brought challenges in federal court. The statement

of these employees will replicate the terms and conditions for temporary employment, annexed hereto as Exhibit "1".

3. I am further advised that the Police Department requires the additional manpower which will be provided by these 250 officers to provide adequate police services to the people of the City of New York. Additionally, no irreparable harm will accrue to the plaintiffs herein inasmuch as their rights are preserved by virtue of the notice given by the Police Department to all new hires.

Based upon the foregoing, the application for a temporary restraining order should be denied.

Rosemary Carroll
ROSEMARY CARROLL

Sworn to before me this
17th day of March, 1977

Judith Kawer Kay
JUDITH KAWER KAY
Notary Public, State of New York
No. 31-4667379
Qualified in New York County
Commission Expires March 30, 1977

MEMO ENDORSED BY CARTER, J. ON UNSIGNED T.R.O.

76 Civ. 1982 (RLC)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

THE GUARDIANS ASSOCIATION OF THE NEW YORK CITY POLICE DEPARTMENT, INC., et al.,

Plaintiffs,

-against-

CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK, et al.,

Defendants.

TEMPORARY RESTRAINING ORDER

CHRISTOPHER CROWLEY
Attorney for Plaintiffs
1 Chase Manhattan Plaza
New York, New York 10005
(212) 422-3400

JUL 7 - 1976 Plaintiffs application for a Temporary Restraining Order is Denied.

So ORDERED

Robert L. Carter
U.S.D.J.

U.S. DISTRICT COURT
FILED
JUL 8 1976
S.D. OF N.Y.

Gene R. Flynn
Southern District Representative
U.S. Bureau of the Census
26 Federal Plaza
New York, N.Y. 10007
212-264-4713

CURRENT POPULATION REPORTS

Special Studies

Series P-23, No. 56
Issued August 1975

COVERAGE OF POPULATION IN THE 1970 CENSUS AND SOME IMPLICATIONS FOR PUBLIC PROGRAMS

- National Population Coverage
- Subnational Population Coverage
- Implications for Distribution of Public Funds
- Implications for Political Representation

U. S. DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS

U. S. DEPARTMENT OF COMMERCE

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for Economic Affairs

BUREAU OF THE CENSUS

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SUGGESTED CITATION

U.S. Bureau of the Census, **Current Population Reports**, Series P-23, No. 56, "Coverage of Population in the 1970 Census and Some Implications for Public Programs," U.S. Government Printing Office, Washington, D.C., 1975.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402, and U.S. Department of Commerce, district offices, $0.90. Current Population Reports issued in Series P-20, P-23, P-25, P-26, P-27, P-28 (summaries only), P-60, and P-65 are sold as a single consolidated subscription at $56.00 per year, $14.00 additional for foreign mailing.

CURRENT POPULATION REPORTS

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COVERAGE OF POPULATION IN THE 1970 CENSUS AND SOME IMPLICATIONS FOR PUBLIC PROGRAMS

by Jacob S. Siegel

PREFACE

The Bureau of the Census has long been concerned about the quality of the data which it produces. More recently it has begun to give attention to the various implications of the errors in the data. This report was prepared largely in pursuance of a request of a group of leaders of the Black Community, which met under Bureau sponsorship, on May 24 and June 19, 1974, to the Bureau to prepare a document reviewing the methodology and the extent of undercoverage of the population in the 1970 census and examining the implications of geographic variations in undercoverage for various public programs, particularly political representation and disbursement of public funds. The present report deals only with selected aspects of this broad topic, giving principal attention to the impact of underenumeration on legislative redistricting and on the apportionment of funds, especially under General Revenue Sharing. Many other political and fiscal consequences of underenumeration, such as the effects on per capita disbursements of funds, are not considered.

This document was first issued informally as a provisional report early this year on the occasion of the first meeting of the newly established Census Advisory Committee on the Black Population for the 1980 Census (Feb. 28). The copies of the provisional report distributed to the members of the Committee were accompanied by the letter of transmittal from the Director of the Census to the Committee members which is reproduced following the preface. The revised report is now being formally issued as a Bureau of the Census report in the P-23 Series so that it may be made more widely available.

This report was designed and written by Jacob S. Siegel, Senior Statistician for Demographic Research and Analysis, Population Division. Principal professional assistance in the preparation of the report was rendered by Mark D. Herrenbruck and Donald S. Akers, demographic statisticians on the Population Analysis Staff, Population Division. They shared the responsibility for designing and supervising the calculations as well as of assisting the author in developing the assumptions and procedures. Rita A. Daly and Gary D. Smith assisted them in carrying out the various calculations. Mark Herrenbruck was responsible for coordination and checking of the text and tables of the report. Jerome Glynn advised on computer applications, particularly with respect to the production of the various population series. Roger A. Herriot provided advice on the procedures used in calculating the General Revenue sharing allocations and, with the assistance of Victor T. Anglin, directed the production by computer of the various series relating to the revenue sharing allocations. He also provided the adjusted estimates of total money income for States which were employed in calculating some of the series of revenue-sharing allocations. The assistance of Mary C. Bland, who typed several drafts of the report, is gratefully acknowledged.

Charles D. Jones and Richard F. Blass of the Statistical Methods Division kindly provided various unpublished tabulations from the 1970 Census—CPS Match Study and made helpful comments on the parts of the draft where this material was used.

The Bureau wishes to thank Professor I. Richard Savage of the Department of Statistics, Yale University, and Mr. William Grindley of Stanford Research Institute for their helpful comments on the provisional version of the report.

The Bureau of the Census also wishes to thank the members of the Census Advisory Committee on the Black Population for the 1980 Census for urging the Bureau to give special attention to the subject treated here and to prepare an appropriate report, and for critically considering the resulting study. The Bureau of the Census profited greatly from the discussion of the report at the first meeting of the Committee, when the provisional version was a principal agenda item. This role of the Committee does not in any sense imply endorsement of the present report. Responsibility for the methods employed, interpretations made, and conclusions drawn belongs wholly to the Bureau of the Census.

LETTER FROM THE DIRECTOR OF THE CENSUS TO THE CENSUS ADVISORY COMMITTEE ON THE BLACK POPULATION FOR THE 1980 CENSUS

UNITED STATES DEPARTMENT OF COMMERCE
Bureau of the Census
Washington, D.C. 20233

OFFICE OF THE DIRECTOR

February 28, 1975

Dear Committee Member:

At the May 24th meeting with the Leaders of the Black Community, the participants requested that the Bureau of the Census prepare a special report on the undercoverage in the 1970 census and its implications for the black community. The consensus was that the report describe the methodology used in developing its national estimates of the undercount, explore various methodologies which could be used to produce adequate estimates of the underenumeration of the population, by race, at the State and local levels, and analyze the impact of the undercount on congressional apportionment, congressional, State, and local districting, and the General Revenue Sharing Program. The attached report contains our findings.

The results of the Bureau's analyses indicate that, in general, the impact on political representation, apportionment of funds, and general revenue sharing allocation of potential adjustments for underenumeration would be considerably less than might be suggested by intuition from the underenumeration rates themselves. Nevertheless, it is possible to find specific examples where it appears that substantial inequity may occur. The principal problem is how to deal with these specific instances since there seems to be no currently available method that is uniformly acceptable for correcting for the effects of underenumeration at the State and local levels.

The National Academy of Sciences recommended in its report, America's Uncounted People, that increased support should be given to analytic studies with the objective of devising methods for adjusting small-area census counts. The Bureau is giving serious attention to these problems and is planning further research efforts with the hope of developing theoretical models, capable of being tested, that may lead to improved and adequate procedures for correcting census counts of State and local areas. Even if such methods can be developed, two problems must be faced. One is that there is serious question as to whether such methods would be operationally feasible. Secondly, there can be no guarantee that the adjustments made will treat everyone equitably. In fact, some allocations may be more inequitable following the adjustment than they were before.

Apportionment and revenue sharing are not the only programs that depend upon accurate census information at the State and local level; decisions regarding other public programs at all levels are also made on the basis of such data. Therefore, a more promising approach would be to take a

better census initially than try to correct for the undercoverage below the national level. Attention at the Bureau is being directed toward a systematic consideration of innovative procedures for improving census coverage and toward a program of assessing such procedures. With the help of the various advisory committees, we hope to make a substantial improvement in coverage of minorities in the 1980 census.

Sincerely,

VINCENT P. BARABBA
Director
Bureau of the Census

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COVERAGE OF POPULATION IN THE 1970 CENSUS AND SOME IMPLICATIONS FOR PUBLIC PROGRAMS

INTRODUCTION AND SUMMARY

The Bureau of the Census first publicly presented its findings regarding the completeness of coverage of the United States population in the 1970 census at a press conference in April 1973 and at the annual meeting of the Population Association of America held in the same month. Subsequently, the results were published in **Demography**[1] and in the Bureau of the Census report, Evaluation and Research Program PHC(E)-4.[2] Publication of these documents and the present one reflect the Bureau's continuing effort to inform users of data from the decennial population censuses regarding the quality of the data and the implications of errors in them.

The reports cited present estimates of net underenumeration only for the population of the United States as a whole. Even before presentation of these results, many groups inquired about the possibility of analyzing census coverage in 1970 for areas within the United States, such as States, counties, and major cities. The considerable interest in such figures arises not only because of the desire to employ improved data in the planning and evaluation of various public and private programs, but also because of the fact that considerable sums of money are distributed to governmental units on the basis of population or population and other factors and population is the key factor in determining political representation in legislative bodies.

This report presents first a summary of the Census Bureau's work on the coverage of the national population in 1970. Next, it discusses the problems and possible procedures involved in the preparation of estimates of population coverage for States and major political units within States for 1970. The implications of census underenumeration of the population of such areas with respect to political representation and financial allocations are then considered. Since adequate estimates of census coverage of the population of States and smaller political units are not available, population adjustments for States (but not for counties and cities) were developed for the present purpose using partly arbitrary criteria. The calculations are, therefore, not definitive; they are only illustrative of the possible levels of underenumeration and of the general character of the changes that would result from adjusting the population data used in carrying out various public programs.

Underenumeration in the United States in 1970 has been estimated at the relatively low level of about 2.5 percent. Although corresponding estimates for areas within the United States are not available, variations from area to area are suggested by differences in national figures for the principal races and by limited data from various special studies. In the absence of a tested formula for deriving reliable estimates of undercoverage for State and local areas, several alternative series of corrected figures have been prepared for States designed to illustrate some possible coverage levels and as a basis for evaluating illustratively the effect of coverage errors on political representation and the disbursement of funds. In the basic synthetic method, national coverage rates by race, or age, sex, and race, are applied to the population of each State, and in the several modified synthetic methods the national rates by race are varied according to low-income status, median family income, or educational level for States. An experimental project using more complex methods of demographic analysis to measure coverage of State population is now under way at the Census Bureau.

Some of the principal findings of this study may be noted here, but it is to be emphasized that the particular numerical results depend on the adequacy of the adjustments for underenumeration and that the adjustments employed in this report are subject to substantial error. The rates of underenumeration for States according to the various assumptions reflect largely the racial distribution of the population in each State. According to the various synthetic methods, 15 to 21 States show undercount rates under 2 percent, 40 to 43 States show undercount rates under 3 percent, and 44 to 50 States show undercount rates under 4 percent. Adjustment for undercount rates derived by these methods would either not affect Congressional apportionment or would cause a shift of only one Congressman between a pair of States. The size and variation of the percentage shifts in funds allocated to States under a simple apportionment formula based on population only, resulting from a correction of census counts for States, would be far less than the population undercount rates. Nearly all (46 to 50) States would receive less than 2 percent more or less in funds than they would receive on the basis of the census counts, and 40 to 46 States would receive less than 1 percent more or less.

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[1] Jacob S. Siegel, "Estimates of Coverage of the Population by Sex, Race, and Age in the 1970 Census, "**Demography**, Vol. 11, No. 1, February 1974.

[2] U.S. Bureau of the Census, 1970 Census of Population and Housing: Evaluation and Research Program PHC(E)-4, **Estimates of Coverage of Population by Sex, Race, and Age: Demographic Analysis**, U.S. Government Printing Office, Washington, D.C., 1974.

Under the General Revenue Sharing formula the adjustment for population only, at the State level, results in little change in funds apportioned. Only the District of Columbia would show a shift in funds exceeding 2.0 percent with the basic synthetic method of population adjustment, and 5 States would show such a shift with the synthetic method modified according to median family income. The funds apportioned would be altered to a much greater extent, however, if both population and income were fully adjusted for understatement; then, under the two population adjustment procedures 17 States and 15 States, respectively, would show shifts in funds exceeding 2.0 percent. The effect of adjusting the per capita income factor in the formula is much greater than the effect of adjusting the population factor, and the amount and direction of the change on the basis of population give little or no indication of the amount or even the direction of change on the basis of income. Nevertheless, when both the population and per capita income factors are corrected, the shifts in the revenue-sharing funds are generally less than the underenumeration rates for population estimated by synthetic methods.

Any estimates of coverage for areas within States would be speculative since the variation around State levels of coverage could be considerable. A set of model calculations using various assumed correction factors for population suggests that the possibility of an increase in the number of Congressmen, State legislators, or city councilmen for a designated part of a State or city at the expense of a legislator from the other part of the same State or city is extremely small; a relatively high undercount rate would be required over a large number of contiguous legislative districts. Illustrative calculations for areas within States of the effect on revenue-sharing allocations of correcting the population factor only in the formula would give misleading indications of greater equity in the distribution of revenue-sharing funds, inasmuch as adjustments for the omission of the income of missed persons in the per capita income factor and in the "tax effort" factor would tend wholly to offset the population adjustments in the population factor and the per capita income factor, and a further adjustment for the understatement of the income of enumerated persons would produce a substantially different distribution of funds.

NATIONAL POPULATION COVERAGE

Scope of Available Coverage Estimates

Official estimates of the completeness of the coverage of the population in the 1970 census have been prepared by the U.S. Bureau of the Census only for the United States as a whole. Separate estimates of net census errors are available for each age group for males and females, and for whites and blacks. Comparable estimates could not be prepared for the population of Spanish heritage in spite of the frequently expressed interest in such figures. The estimates relate to the resident population of the United States, excluding U.S. Armed Forces and citizens overseas. Several sets of estimates of net underenumeration of the total population and of net census error rates for age, sex, and race classes in 1970 were prepared and the set which utilized the available data most fully and appeared to be most logical demographically was selected as the "preferred" set. A detailed account of the results, and of the methodology and the assumptions used in preparing the estimates, is given in our report, Evaluation and Research Program PHC(E)-4.[3]

Summary of National Error Rates

The preferred estimates of net underenumeration of the U.S. total population in 1970 is 5.3 million persons. This amount corresponds to a rate of 2.5 percent. The comparable figures in 1960 are 5.1 million and 2.7 percent.

The estimates for the sexes and races indicate that about two-thirds of the persons missed in the 1970 census were males and about two-thirds were white. The net omission rate for males (3.3 percent) was nearly twice that for females (1.8 percent) and the net omission rate for blacks (7.7 percent) was about four times as great as for the white population (1.9 percent). Both race groups showed a greater deficit of males than females. Accordingly, undercoverage was greatest for black males (9.9 percent), least for white females (1.4 percent), and intermediate for white males (2.4 percent) and black females (5.5 percent). In sum, the estimated national rates of underenumeration (in percents) are as follows:

Sex	Omission rate (percent)		
	All classes	White	Black
Both sexes...	2.5	1.9	7.7
Male.....	3.3	2.4	9.9
Female.....	1.8	1.4	5.5

According to the preferred set of estimates, net undercount rates for black males were over 10 percent in all 5-year age groups under 65 except in the range 5 to 19 and at ages 60 to 64, exceeding 12 percent in each group from 20 to 49 years of age and reaching 17 to 19 percent at age 25 to 44.

[3] U.S. Bureau of the Census, PHC(E)-4, op. cit.

Summary of Methodology Used in Deriving the Estimates

The principal method used to estimate the coverage of the national population is termed "demographic analysis." The method involves the compilation, combination, and manipulation of various types of demographic data that are largely independent of the 1970 census and aggregated data from administrative records, to derive an expected "true" population for comparison with the census results. The principal types of demographic data and administrative record data that were used in the present instance are data from previous censuses, birth statistics, death statistics, life tables, immigration data, and Medicare enrollments. The accuracy of estimates derived by demographic analysis is, of course, affected by the quality of the basic data and the adequacy of the assumptions employed in preparing the estimates.

In brief, the method of deriving the preferred set of estimates of coverage error is as follows. The estimates of the corrected population under 35 years of age were based directly on birth statistics for the years 1935 onward (adjusted for underregistration), which were carried forward to 1970 by statistics of deaths and statistics of net immigration (adjusted to include certain omitted categories). The estimates for white females aged 35 to 64 years of age represent extensions to 1970 of estimates for native white females aged 15 to 44 years of age in 1950 prepared by Coale and Zelnik.[4] In general, the Coale-Zelnik method involved estimating the "true" number of births for each year from the census counts for the population in single ages in several successive censuses corresponding to each birth cohort, and then aging these births forward to census dates to derive the corrected population.

The estimates for black females aged 35 to 64 represent extensions to 1970 of estimates for these cohorts in 1960 prepared by Coale and Rives.[5] The Coale-Rives estimates started with the assumption that the "true" population in 1880 could be determined on the basis of "model" tables of population distributions. This corrected age distribution was carried forward to 1970 on the basis of mortality rates taken from a combination of model life tables and official life tables. Estimates of births were derived on the assumption that the proportion of the population under 20 years of age for females in the preliminary projections and the proportion in the census were the same, combined with use of assumed sex ratios of births. The corrected black as well as white male populations 35 to 64 years of age were derived by applying expected "true" sex ratios (males per 100 females) to the corresponding corrected female populations.

Corrected estimates of persons 65 and over in 1970 were derived from Social Security Administration figures on persons enrolled for hospital and/or medical insurance under the Medicare system. The Medicare data were adjusted for persons not enrolled in Medicare and further adjusted to be consistent with expected "true" sex ratios for the elderly population.

Sources of Error and Alternative Estimates

The alternative sets of estimates of net underenumeration reflect our uncertainty in the results. Still other sets of estimates could reasonably have been developed, considering the possible errors in the data and in the assumptions. The figures presented were recognized as estimates subject to revision and, in fact, research on their accuracy was initiated as part of the estimation process and has been continuing.

The component of the estimation process to which the greatest uncertainty is attached is net immigration. Recent research suggests that the estimates of net immigration for 1960 to 1970 employed in calculating the published estimates of coverage could be in error by as much as 1 million—either through understatement of immigration, both of aliens and citizens, or through understatement of emigration, both of aliens and citizens, particularly of foreign-born residents. Other important sources of possible error include the completeness of the Medicare enrollment data, a primary basis of estimating net census errors for the population 65 and over; the accuracy of the expected sex ratios, the measure employed in calculating the coverage estimates either for males or females from coverage estimates for the other sex derived directly; the allowances for the underregistration of births, the essential basis of estimating the expected population under 35 years of age; and the use of official death statistics and life tables without adjustment for possible underregistration and age misreporting of deaths. In addition, a number of assumptions subject to error are involved in the complex demographic procedures used to calculate the expected female population 35 to 64 years of age.

Various alternative estimates of the total net underenumeration in the 1970 census were prepared corresponding to various estimates of net underenumeration in the 1960 census and to various estimates of the amount of change in population between 1960 and 1970. Alternative estimates of coverage for 1960 were based either on demographic analysis, reinterview surveys, or a composite of these procedures. Because we

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[4] Ansley J. Coale and Melvin Zelnik, **New Estimates of Fertility and Population in the United States,** Princeton, N.J., Princeton University Press, 1963, Chapter 2.

[5] Ansley J. Coale and Norfleet W. Rives, Jr., "A Statistical Reconstruction of the Black Population of the United States, 1880-1970: Estimates of True Numbers by Age and Sex, Birth Rates, and Total Fertility, " **Population Index,** January 1973, Office of Population Research, Princeton University, and Population Association of America, Inc., pp. 3-36.

consider our estimates of births and deaths between 1960 and 1970 as being of a high order of accuracy, but not our estimates of net immigration, the estimates of intercensal change vary solely on the basis of variation in the estimates of net immigration in this period. The various estimates of the amount of net underenumeration in 1970 range from 3.1 million to 5.8 million (or from 1.5 to 2.8 percent). The lower estimates—3.1 million to 4.9 million—are based on the results of reinterview surveys, or a composite of the results of demographic analysis and reinterview surveys, in 1960. The more reasonable possibilities, indicated by demographic analysis, range from 4.8 million to 5.8 million (or from 2.3 to 2.8 percent). These figures vary by one-half million above and below the preferred estimate of 5.3 million (2.5 percent)—that is, by 10 percent of the preferred estimate. Fay's detailed review of the estimates of coverage for 1970 published by the Census Bureau employing the same basic data as the official preferred estimate concludes that underenumeration should be 800,000 greater than the official estimate but that the confidence interval of this higher estimate encompassed the official figure.[6]

A rough measure of national population coverage may also be obtained from the 1970 Census—Current Population Survey (CPS) Match Study, a case-by-case match of a sample of households reported in the Current Population Survey and households reported in the census.[7] The original coverage rate reported by the Match Study, 3.1 percent, needs to be adjusted downward to reflect the inclusion in the census count as published of certain classes of persons who could not be directly enumerated for various reasons ("imputations")[8] and for whom census questionnaires were not available for the Match Study. An adjusted estimate of the underenumeration rate that can be compared with the estimate based on demographic analysis is 2.3 percent. (A further downward adjustment should be made in this figure to allow for the small amount of overenumeration in the census.) Omission rates are also available by sex and race from the Match Study, but the information necessary for adjusting them (downward) is not available:

Sex	Omission rate (percent)		
	All classes	White and other races	Black
Both sexes...	3.1	2.6	7.5
Male.....	3.1	2.6	7.3
Female.....	3.1	2.5	7.6

The Match Study estimates agree with the "demographic" estimates in showing much higher underenumeration rates for blacks (7.5 percent) than for whites (2.6 percent), especially for females. They differ in not showing higher underenumeration rates for males than for females; yet such a relationship is firmly demonstrated by demographic analysis. The differences between the results of the two studies are probably to be explained by the combined effect of the greater understatement of the underenumeration of males than females in the Match Study (correlation bias) and the omission of "imputations" from the census records when the Match Study was carried out. Evaluations based on surveys have typically understated the extent of underenumeration in censuses, especially of groups typically underenumerated in censuses.

The 1970 Census—CPS Match Study provides additional information regarding national census coverage in 1970 in the form of estimates of the coverage of housing units. Estimates of the coverage of occupied units cannot be taken to indicate the level of population coverage directly, because it is necessary also to allow for the difference in average household size between enumerated and missed units and the understatement of average household size of enumerated units. Quite clearly, on the basis of our preferred estimates of population coverage, coverage of population is much less complete than coverage of housing units. About 1.4 percent of the occupied housing units were omitted from the census according to the 1970 Census—CPS Match Study,[9] but 2.5 percent of the population was omitted from the census according to the estimates of coverage based on demographic analysis.[10] Thus, if we assume no difference in the average size of missed and

[6] Robert E. Fay III, **Statistical Considerations in Estimating the Current Population of the United States**, unpublished PhD dissertation, University of Chicago, August 1974.

[7] U.S. Bureau of the Census, 1970 Census of Population and Housing: Evaluation and Research Program, **Estimates of Coverage of Population: Census-CPS Match**, unpublished study. The results of this study are affected by the fact that a portion (under 3 percent) of the cases in the CPS could not be definitely assigned as enumerated or missed, by the correlation bias between the two "surveys," by the fact that the census records were employed prior to adjustment for certain classes of persons who could not be directly interviewed, and by the fact that persons living in special dwelling places and college students were excluded from the comparison.

[8] U.S. Bureau of the Census, 1970 Census of Population and Housing: Evaluation and Research Program PHC(E)-6, **Effect of Special Procedures to Improve Coverage in the 1970 Census**, U.S. Government Printing Office, Washington, D.C., 1974, pp. 2-3.

[9] U.S. Bureau of the Census, 1970 Census of Population and Housing: Evaluation and Research Program PHC(E)-5, **The Coverage of Housing in the 1970 Census**, U.S. Government Printing Office, Washington, D.C., 1973, table D, p. 5.

[10] U.S. Bureau of the Census, PHC(E)-4, **op. cit.**, table 3, p. 29.

enumerated households, about 1.4 percent of the population was missed as a result of failure to enumerate all occupied housing units, and 1.1 percent of the population was missed as a result of omission of persons in enumerated units.

SUBNATIONAL POPULATION COVERAGE

General Problems Relating to Data and Methodology

For most uses of census data, incomplete coverage of the national population is not serious, particularly if the rate of underenumeration is small and if all constituent geographic areas are affected more or less uniformly. The national average rate of underenumeration is small (2.5 percent) but geographic uniformity almost certainly does not exist, as is suggested in part by the difference in the national coverage rates of the two principal races. There may, in fact, be large variations in coverage rates from area to area and, if so, they are of serious concern for many uses of census data. Some black leaders and city mayors maintain that incomplete coverage in the census has resulted in inequitable allocations of funds to governmental units or in an improper distribution of representatives in legislative bodies. The Census Bureau has recognized the pressing importance of this matter and has launched a major program to try to measure the coverage of the population of the principal subnational areas. Research on the coverage of the population of States in the 1970 census is now under way.

There has been a presumption on the part of many persons that it should be readily possible to develop a methodology that would produce reliable estimates of coverage for States and areas within States. This is not true. Estimates of the coverage of the population of geographic subdivisions of the United States, similar in reliability and scope to those prepared and published for the United States as a whole, cannot be prepared. It may not even be possible to develop a methodology which would produce adequate estimates for States. The measurement problem for areas within States is even more difficult and could involve very different methods. Any estimates for counties and cities would, on the average, be subject to much greater error than those for States.

Furthermore, given the uncertainties of the data, assumptions, and methods, and hence of the resulting estimates of coverage, proper statistical procedure calls for developing estimates of the range of error in any estimates of coverage. Without such estimates of the "confidence interval," we may be accepting estimates of coverage that have untenably large bands of error or that are for some of the geographic units included, farther from the true population than the uncorrected numbers. The measurement of error bands presents an even more difficult problem than estimating the coverage rates themselves.

States

Prior studies relating to regional variations in coverage. Several prior studies provide limited information regarding regional variations in census coverage in the United States. These studies all involve the "dual systems" approach, that is, a case-by-case match of census data with data from another survey (e.g., post-enumeration survey, Current Population Survey) or a set of records (e.g., birth registration records, Medicare enrollment). None of these studies employ the method of demographic analysis.

The results of these studies cannot be taken as directly indicative of the variations in the coverage of the total population of geographic regions in 1970, since they relate to an earlier census, a demographic variable other than population, only part of the population in 1970, or are subject to serious measurement errors. Where the evaluation is based on a match of the census with a survey, it is probable that the extent of undercoverage in the census is understated because of omission of the same individuals in the survey, and since the understatement may vary from one area to another, the estimated regional pattern of undercoverage may reflect the actual pattern only roughly.

The 1950 Census—Post-Enumeration Survey (PES) Match Study showed the highest rate of omission in the South (1.8 percent) and the lowest rate in the Northeast region (0.8 percent), as compared with a national average of 1.4 percent.[11] While the estimates of coverage error derived from the PES tabulations appear to be seriously low, it is reasonable to suppose that the actual geographic differences are at least as large as those shown by the PES figures and that the PES figures essentially reflect the regional pattern of coverage error.

The 1960 Record Check Study, a match of the 1960 Census with various records covering the "entire" population (1950 census, persons added by the 1950 Census—Post-Enumeration Survey, birth registrations from 1950 to 1960, aliens registered in January 1960), indicated the highest gross omission rate for the South and the lowest gross omission rate for the North Central region in all six series of estimates.[12] One series, for example, shows 5.1 percent for the South, 4.3 percent for the West, 3.7 percent for the Northeast, and 3.4 percent for the North Central region.[13]

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[11] U.S. Bureau of the Census, **The Post-Enumeration Survey: 1950**, Bureau of the Census, Technical Paper No.4, Washington, D.C., 1960, table F, p. 10.

[12] U.S. Bureau of the Census, **Evaluation and Research Program of the U.S. Censuses of Population and Housing, 1960: Record Check Studies of Population Coverage**, Series ER60, No. 2, Washington, D.C., 1964, table 4, p. 9.

[13] This series appears to be most consistent with the national estimate of net underenumeration derived by the method of demographic analysis.

A comparison of the missed rates for occupied housing units, as estimated from the 1970 Census—CPS Match Study, shows that the field coverage may have been somewhat better in the North Central region (0.8 percent) and worse in the South (2.6 percent).[14] However, when the results of the Post-Enumeration Post Office Check in the South are taken into account, the estimated missed rate for the South (1.7 percent) approximates the rates for other regions. In 1960 the rate for the South was well above the rates for other regions.

The 1970 Census—Medicare Match Study showed gross omissions of aged persons from the census to be highest in the South (6.8 percent) and lowest in the North Central region (3.7 percent), as compared with a national average of 4.9 percent.[15] The variation between regions is pronounced for white females, the missed rate in the South (6.7 percent) being about double the missed rate in the other three regions. The data also suggest regional variations for the other sex-race groups (although not for Negroes-and-other-races as a whole), but the sample was to small to provide definitive results.

Finally, the 1970 Census—CPS Match Study provides a limited indication of geographic variations in coverage of the total population of regions in the 1970 census. Omission rates for the four regions, as originally compiled and as adjusted downward to reflect the inclusion of "imputations" in the census counts as published, are as follows:[16]

Region	Omission rate (percent)	
	Before adjustment	After adjustment
United States..	3.1	2.3
Northeast.....	3.1	2.5
North Central.....	1.7	1.1
South.....	4.5	3.0
West.....	2.6	1.9

The omission rate is highest in the South and lowest in the North Central region; the rates for the Northeast and the West are intermediate.

On the basis of the various studies using the dual-systems approach, we can make a very simple generalization. The South consistently appears to have the poorest coverage rate and the North Central region generally appears to have the best coverage rate.

An interesting and important question is whether the variation between regions is merely the result of the differences in race composition or whether it is also the result of differences in the coverage rates for each race from region to region. After this report had virtually been completed, omission rates for regions, for blacks and "whites and other races" separately, became available from the 1970 Census—CPS Match Study. These (unadjusted) figures suggest that there is regional variation in the coverage rates for each race. The regional variation in coverage for "blacks" and "whites and other races" resembles each other and that for all classes; for blacks, omission rates in the South, West, and Northeast are consistently well above the rate for the North Central States by a roughly similar amount:

Region	Omission rate (percent)	
	Black	White and other races
United States..	7.5	2.6
Northeast.....	8.3	2.8
North Central.....	4.1	1.5
South.....	8.5	3.6
West.....	7.4	2.4

Synthetic method. A satisfactory methodology which would produce reliable estimates of coverage even for States is not available and has to be developed. A great variety of methods may be considered, from rather simplistic ones to highly complex ones, each having many variants.

The simplest procedure that might be used for estimating the coverage of State populations is the method of reference to standard ratios or the synthetic method.[17] In the present application national estimates

[14] U.S. Bureau of the Census, PHC(E)-5, op. cit., table G, p. 9.

[15] U.S. Bureau of the Census, 1970 Census of Population and Housing: Evaluation and Research Program PHC(E)-7, **The Medicare Record Check: An Evaluation of the Coverage of Persons 65 Years of Age and Over in the 1970 Census**, U.S. Government Printing Office, Washington, D.C., 1973, table 2, p. 12.

[16] U.S. Bureau of the Census, **Census-CPS Match Study**, unpublished op. cit.

[17] The method of reference to standard ratios or the synthetic method is widely used by demographers as a device for obtaining estimates, approximations, or adjustments of absolute numbers or general ratios (rates or proportions) for different dates, periods, or areas by reweighting (reaveraging) a group of standard specific ratios according to a different population distribution (age, sex, etc.) than originally used. The method is akin to the many forms of standardization, the method of expected cases, etc. See U.S. Bureau of the Census, **The Methods and Materials of Demography**, by Henry S. Shryock, Jacob S. Siegel, and Associates, GPO, Second Printing, 1973, pp. 326-327; and Maria Elena Gonzalez, "Use and Evaluation of Synthetic Estimates," pp. 46-50 in U.S. Bureau of the Census, **Statistical Methodology of Revenue Sharing and Related Estimate Studies, Census Tract Papers**, Series GE-40, No. 10, 1974.

of net undercount rates for the various race categories, or age, sex, and race categories, are applied to the corresponding population figures for each State. This procedure assumes that there is no variation from State to State in the undercount rate for each of these categories. The synthetic method produces variable estimates of the rate of underenumeration for the total population of each State, differing from the estimate for the total population of the United States (2.5 percent), principally as a joint result of the difference in the national rates of underenumeration for whites and blacks and the variation from State to State in the racial composition of the population. The synthetic procedure thus involves a reweighting of the national estimates of the net undercount rates for each of the race categories, or each of the age, sex, and race categories, according to the proportions of the populations in each of these categories in each State. Where the proportion of blacks in the population is larger than in the country as a whole, the underenumeration rate for that area would tend to be larger than for the United States (2.5 percent); where the proportion is smaller, the underenumeration rate would tend to be smaller.

Several sets of estimates of population corrected by the synthetic method (designated here "synthetic method" or "basic synthetic method") or variants of it ("modified synthetic methods") have been developed to provide illustrative guides to the variation in population resulting from a coverage adjustment. The first set of illustrative estimates of the rates of net underenumeration for States has been derived on the specific assumption that the Census Bureau's preferred national estimates of net undercount rates for whites, blacks, and "other races," by age and sex, corresponding to "all-ages" estimates of 1.9 percent for whites, 7.7 percent for blacks, and 0.0 percent for "other races," applied to the population of each State in 1970. The resulting rates are shown in table 1; a summary of these figures is given in table A.

The only extreme figure—6.4 percent—is that for the District of Columbia, which has a very large proportion of blacks. Except for the District of Columbia, only 8 States have rates above 3 percent and they fall between 3.0 and 4.0 percent. These States are all in the South, where the proportions of blacks are well above the national average.

The factors of age and sex have very little impact on the variation in the overall level of underenumeration of States when the synthetic method is used, inasmuch as the sex and age composition of State populations, unlike their race composition, is rather similar. The population corrected only for race composition, commonly differs from the population corrected jointly for race, age, and sex composition by 0.1 percent or less (table 1). The difference is as great as 0.2 percent in only five cases and goes up to only 0.5 percent (Hawaii). The distribution of State rates of underenumeration derived from the use of national rates for race groups only is therefore about the same as the State distribution of rates derived from the use of national rates for age, sex, and race groups combined:

Basic synthetic method--race only

Percent	Number of States
Total (2.5 percent)....	51
Under 2.0.....	17
2.0 to 2.4.....	15
2.5 to 2.9.....	10
3.0 to 3.4.....	5
3.5 to 3.9.....	2
4.0 and over.....	[1]2

[1]Includes the District of Columbia.

Table A. Number of States With Specified Rates of Net Underenumeration According to the Population Corrected by the Basic Synthetic Method, by Regions: 1970

(Based on national rates of net underenumeration for age, sex, and race groups)

Percent	United States	Northeast	North Central	South	West
Total (2.5 percent).....	51	9	12	17	13
Under 2.0.....	15	3	4	-	8
2.0 to 2.4.....	17	4	5	3	5
2.5 to 2.9.....	10	2	3	5	-
3.0 to 3.4.....	5	-	-	5	-
3.5 to 3.9.....	3	-	-	3	-
4.0 and over.....	[1]1	-	-	[1]1	-

[1]District of Columbia.

The distribution of rates of net underenumeration differs to only a moderate extent from the distribution just given, when the population is adjusted separately for race composition and Spanish heritage on the arbitrary and possibly extreme assumption that the population of Spanish heritage was undercounted at the same rate as the black population:

Basic synthetic method--race and Spanish heritage

Percent	Number of States
Total (2.5 percent)....	51
Under 2.0.....	20
2.0 to 2.4.....	11
2.5 to 2.9.....	11
3.0 to 3.4.....	3
3.5 to 3.9.....	4
4.0 and over.....	[1]2

[1]Includes the District of Columbia.

The synthetic method represents one possible way of measuring underenumeration of State populations and provides a useful basis for evaluating illustratively the possible changes in allocations of funds to States under various laws or in political representation of or within the States resulting from an adjustment for undercoverage of population. The method is easy to apply, is uniformly applicable to each State, gives apparently reasonable results, and is unbiased in the sense that the resulting coverage estimates for States are consistent with the overall national coverage rate. On the other hand, the synthetic method fails to take account of the possibly wide variation from State to State in coverage rates for particular age, sex, and race groups. As a result, the estimates of corrected population for some States may seriously overstate or understate the true population, the population figures for some States may be more in error after correction by this method than before, and the relative distribution of State population may have been improved only very little, if at all. Furthermore, the magnitude of the errors in the rates is completely unknown.

In view of the limitations and uncertainties of the synthetic method, consideration was given to the development of alternative illustrative methods of measuring the coverage of State populations in 1970 that could take account of State variations in coverage for each race group. For the most part, the methods envisaged extend the synthetic method to allow for State variations in the coverage of the races on the basis of various symptomatic data (i.e., data presumably or possibly correlated with underenumeration) or employ various techniques of demographic analysis, including comparison with aggregated administrative record data.[18]

Symptomatic data on coverage. We know little in formal quantitative terms about the types of areas, households, and persons that are most subject to undercounting. Yet, this is the kind of information needed to impute variations for States in national coverage figures. One might surmise that the coverage rates for areas whose average income and average educational level are relatively low would be lower than the coverage rates for areas with relatively high average incomes and educational levels. There is some evidence supporting this hypothesis from the 1950 Census—Post-Enumeration Survey Match Study and the 1970 Census—Current Population Survey Match Study. Neither study represents the level and variations in undercoverage closely, but the types of differentials they indicate are believed to be at least roughly valid.

The 1950 Census—PES Match Study shows a general tendency for undercoverage to be somewhat greater among persons of lower educational, economic, and occupational status.[19] This finding applies to all races combined, however; it is not known whether it applies to each race separately.

The 1970 Census—CPS Match Study provides further evidence supporting the hypothesis that coverage is inversely related to income and educational level.[20] For example, 4.4 percent of persons in families earning less than $7,500 in 1969 were missed, but the rate was about 2.1 percent for persons in families earning more than $7,500; median family income of persons missed in the census was only about 73 percent as great as the median family income of the entire population. This pattern of differences applied precisely to the whites but only roughly, if at all, to the blacks. For example, 8 percent of blacks in families earning less than $7,500 in 1969 were missed, and 6 percent of blacks in families earning more than $7,500; the median family income of blacks missed in the census was about the same as the median family income of all blacks. In spite of our

[18]In planning for the evaluation of the 1980 census, the Bureau is giving particular attention to the use of demographic analysis, but is also considering a wide variety of other techniques, such as participant observer studies, longitudinal studies, low altitude aerial photography, post-enumeration surveys, matching studies using administrative records, "multiplicity" designs for enumeration, and intensive coverage of experimental areas using local lists of many kinds. These methods are designed to provide a maximum amount of information on this problem which can be used to supplement and extend the results of the demographic method.

[19]U.S. Bureau of the Census, Technical Paper No. 4, op. cit., p. 11.

[20]U.S. Bureau of the Census, Census-CPS Match Study, unpublished op. cit.

expectations, therefore, we have only faint evidence of variation of coverage according to income among blacks. The 1970 Census—CPS Match Study also showed a higher missed rate for unemployed workers (4.2 percent) than for employed workers (2.5 percent), but for blacks in particular the omission rate for the employed (6.0 percent) appears to be substantially higher than for the unemployed (3.7 percent). The 1970 Census—CPS Match Study also showed a higher missed rate for persons who had completed only eight years of schooling or less (3.8 percent) than for persons who had had some high school education (2.5 percent). This relation applied to both blacks and whites, but the relative difference was much smaller for blacks than for whites. (We note again that these rates of omission require a downward adjustment because census data excluding imputations were employed.)

We would also expect enumeration to be more difficult in geographically isolated areas and in areas where the pattern of the distribution of housing units is very irregular, whether in the open country or the inner city. The 1950 Census—PES Match Study indicates rather pronounced differences in the level of coverage error between residence categories (size of city, rural farm vs. rural nonfarm residence),[21] but these differences do not fully support the hypothesis set forth. The rate of net underenumeration was highest for the rural-nonfarm population and lowest for the rural-farm population and urban places under 50,000. Coverage rates for cities of 1,000,000 or more and cities of 50,000 to 1,000,000 were not significantly different from the national average.

Studies of the coverage of housing units in 1960 and 1970 show that in 1960 coverage of housing units varied according to city-size, with the least satisfactory coverage in the largest cities and in rural areas, but that in 1970 coverage was fairly similar from one residence category to another, except for the higher rates in rural areas.[22] The estimated missed rate for occupied housing units in "mail-back" areas in 1970 was about 1.3 percent; that is, coverage of occupied housing units in metropolitan areas was nearly complete.[23] These studies also show that the missed rate for occupied units was lower in metropolitan areas (1.4 percent) than in nonmetropolitan areas (2.0 percent).

The 1970 Census—Medicare Match Study shows little variation between urban and rural areas, metropolitan and nonmetropolitan areas, or the principal parts of urban (urbanized-nonurbanized) and metropolitan (central city-outside central city) areas in the rate of gross omissions of elderly persons from the census.[24] This general invariance by residence category also applies to the figures for each race separately.

The 1970 Census—CPS Match Study also provides information on the variation of coverage rates by type of residence. This study does not provide support to the commonly held view that coverage is poorer in large cities. It shows a lower omission rate for urban areas than for rural areas and a lower omission rate for metropolitan areas than for nonmetropolitan areas.[25] Within metropolitan areas there is little or no difference between the central city and the area outside the central city, and the size of the metropolitan area makes no difference in the coverage rate.

In sum, the available studies do not permit us to make a categorical statement that the people who were missed in the census were disproportionately concentrated in large cities, as is often assumed. Although the most serious problems of conducting the enumeration in the 1970 census seem to have occurred in the inner city and the field operations were most protracted there, these are also the areas where the most intensive and sustained efforts were applied and where experienced census staff members were often employed in supervisory capacities. Moreover, the use of the address register, a verified list of addresses, in the built-up areas of the country, served to bring about nearly complete enumeration of housing units in metropolitan areas. In view of the higher undercoverage rate of the black population, however, it is reasonable to surmise that cities having heavy concentrations of blacks have higher undercoverage rates than areas with much smaller concentrations of blacks.

One further classification of omissions from the decennial census may shed light on regional variation in coverage rates. Omissions of persons living in households which were missed may be distinguished from omissions of persons living in households which were enumerated. It appears that in 1960 the former group constituted about three-fifths of all persons missed but only one-third of blacks missed; the latter group constituted only two-fifths of all persons missed but about two-thirds of the blacks missed.[26] In the 1970 census,

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[21] U.S. Bureau of the Census, Technical Paper No. 4, **op. cit.**, p. 11.

[22] U.S. Bureau of the Census, PHC(E)-5, **op. cit.**, chart 1, p. 7.

[23] U.S. Bureau of the Census, PHC(E)-5, **op. cit.**, table F, p.6.

[24] U.S. Bureau of the Census, PHC(E)-7, **op. cit.**, tables 3 and 4, pp. 13-14.

[25] U.S. Bureau of the Census, **Census-CPS Match Study**, unpublished **op. cit.**

[26] Adapted from: Leon Pritzker and N.D. Rothwell, "Procedural Difficulties in Taking Past Censuses in Predominantly Negro, Puerto Rican, and Mexican Areas," **Social Statistics and the City**, David M. Heer, Editor, Report of a Conference Held in Washington, D. C., June 22-23, 1967, Joint Center for Urban Studies of the Massachusetts Institute of Technology and Harvard University, 1968, p. 78.

coverage of housing units was improved over 1960. As a result, the proportion of all persons who were omitted because their housing unit was missed dropped to only about one-half. For blacks the proportion was between one-quarter and one-third; i.e., nearly three-fourths of the blacks missed were missed in enumerated housing units.[27]

The factors accounting for omission of occupied housing units included the incompleteness of the address register in the mail-out/mail-back areas, the geographic isolation of housing units, and the irregularity of the pattern of the distribution of housing units. These factors may be described also in terms of inadequacies on the part of the Census Bureau or the U.S. Post Office, including error, carelessness, and apathy on the part of census enumerators and postal workers. The principal factors accounting for omission of persons in households which were enumerated may be classified as deliberate concealment, carelessness and confusion in filing the form, and apathy on the part of respondents. The Census Bureau may also have contributed to undercoverage in enumerated households in some ways, such as through possible deficiency in the design of the questionnaire, occasional failure to follow up requests for additional questionnaires by large households or to investigate more intensively "close-out" cases or "vacant" households, etc. In addition, the design of the census may not have allowed adequately for persons who do not fit into any household according to the conventional rules of residence.

[27] Estimated from data in PHC(E)-4, op. cit., and Census-CPS Match Study, unpublished op. cit.

We do not know the relative importance of these factors and they are not readily expressed in terms of geographic or residence areas as defined in the census. In sum, we do not know with any practical precision the net effect of the various influences mentioned on regional variations in coverage rates. We do not, therefore, have a firm basis for varying the national coverage rates within the framework of the synthetic method to represent State coverage rates.

Variants of the synthetic method. Although the evidence regarding State variation in national group-specific coverage rates is not clear or consistent, additional series of net underenumeration rates for States have been prepared allowing for such variation. They are based on partly arbitrary assumptions and are illustrative of only some of the possible levels of State coverage. Three sets of estimates of coverage rates for the States have been prepared by modifying the basic synthetic method to reflect State variations in the economic or educational status of the population for each race group. The first illustrative set of coverage estimates was prepared on the assumption that the population below the low-income level for each race group in each State had twice the rate of underenumeration as the population above the low-income level. A second set of estimates was derived by assuming that the rate of underenumeration for each race group varies inversely with the level of median family income in each State. A third set of figures was derived by assuming that the rate of underenumeration for each race group varies inversely with the level of educational attainment (i.e., median years of school completed) in each State. The distribution of the rates of underenumeration for States according to the various assumptions described are shown in tables B and C.

Table B. Number of States With Specified Rates of Net Underenumeration According to the Population Corrected by the Basic Synthetic Method and by Various Modified Synthetic Methods: 1970

Percent	Basic synthetic method		Modified synthetic method		
	Age, sex, and race	Race only	Proportion at low-income level	Median family income	Educational level
Total (2.5 percent).....	51	51	51	51	51
Under 1.0.....	-	1	1	1	1
1.0 to 1.9.....	15	16	19	14	20
2.0 to 2.9.....	27	25	23	23	20
3.0 to 3.9.....	8	7	6	4	5
4.0 and over.....	[1]1	[1]2	[1]2	[1]7	[1]5

[1] Includes the District of Columbia.

Table C. Number of States With Specified Rates of Net Underenumeration According to the Population Corrected by a Modified Synthetic Method, by Regions: 1970

(Synthetic method modified on the basis of median family income)

Percent	United States	Northeast	North Central	South	West
Total (2.5 percent).....	51	9	12	17	13
Under 2.0.....	15	4	2	-	9
2.0 to 2.4.....	21	5	10	2	4
2.5 to 2.9.....	4	-	-	4	-
3.0 to 3.4.....	2	-	-	2	-
3.5 to 3.9.....	2	-	-	2	-
4.0 and over.....	[1]7	-	-	[1]7	-

[1] Includes the District of Columbia.

When poverty status is used as a determinant of the coverage level for States as described above, the resulting coverage rates differ little from those obtained by the basic synthetic method (either variant), although there is some tendency for the rates to fall. When median family income is the criterion, several fewer States show rates of 3 to 4 percent and several more show rates of 4 percent or more. The rates for several Southern States go up substantially. With the use of educational attainment as a criterion of coverage variation, substantial shifts occur in the coverage rates for States; many more States show low undercoverage rates (under 2.0 percent) than with the basic synthetic method, fewer show intermediate rates (2 to 4 percent), and several more show high rates (over 4 percent). The estimated undercoverage rates obtained on the basis of the various assumptions are shown for States in table 1. Again, it should be noted that these figures should not be taken to represent official estimates of the rates of underenumeration for States, but rather as suggestive of the possible variation in coverage rates between States which may be useful for illustrating some of the political and fiscal effects of underenumeration.

Demographic analysis. Demographic analysis, supplemented perhaps by the results of matching studies, offers a more logical basis for measuring net underenumeration for States. In this method the available demographic data for States are explicitly taken into account to measure State variations in coverage. A principal problem in developing a demographic model for estimating the "true" population of States is that the component method cannot be employed in conventional fashion, since this method would require data on lifetime internal migration (in addition to data on international migration, births, and deaths), and we do not have a source of such data external to the census itself. In applying the component method, we can avoid use of the census data on lifetime internal migration (i.e., data on State of birth) in estimating the "true" population initially, but later we have to make assumptions as to whether coverage error is a function of State of birth, current State of residence, or some combination of these, and as to the degree to which coverage rates of interstate lifetime migrants differ from the coverage rates of nonmigrants. Since the data available for developing the estimates by the analytic method are subject to errors of many kinds and numerous broad assumptions have to be made in applying the method, any effort to develop coverage estimates for States by this method would necessarily be experimental and there can be no guarantee that satisfactory estimates of coverage for States will be derived. Such an experimental project is now under way at the Census Bureau. The general plan involves use of different procedures for ages under 35 years, 35 to 64, and 65 and over.

For the ages under 35, births in each State by race for the period 1935 to 1970 are carried forward by life-table survival rates and further reduced by the number of native Americans who left the country, to estimate the expected number of persons who would be counted in the 1970 census as born in each State. Comparison of State-of-birth data from the census with the estimates of expected population born in each State based on births provides estimates of the coverage of the population born in each State. The task, however, is to evaluate the census data on the population resident in each State rather than the population born in each State. The coverage estimates for the population born in each State are then employed to derive estimates of coverage for the population resident in each State.

To accomplish this conversion, various alternative assumptions are introduced. When coverage is assumed to depend on the State of birth, the 51 coverage rates according to State of birth are weighted together for each State according to the proportions of the residents

of each State born in each of the 51 States. When coverage is assumed to depend on State of residence, then one has a matrix representing 51 simultaneous equations which can be solved by matrix inversion. These calculations can be extended to allow for differences in the omission rates of interstate migrants and nonmigrants, for example in the ratio of 3 to 1.

Although the methodology planned is essentially the same for the black population as for the white population, the compilation and "processing" of the data present many more problems. These include the greater frequency of gaps in the series of required data and the greater scope and seriousness of biases.

Thus far the Bureau has secured some preliminary results for the white and black populations under 35 years of age, by sex. These results do show regional variation in undercoverage rates, with the highest rates in the South and the lowest in the Northeast. The alternative assumptions do not appear to make much difference; essentially the same pattern of State undercount rates is obtained whether it is assumed that coverage depends on State of birth or on State of residence, or that underenumeration rates are equal for interstate migrants and nonmigrants or are higher for interstate migrants than nonmigrants. This is understandable since roughly two-thirds of the population under 35 years of age is living in its State of birth. Several States show overcounts at some of the ages under age 35 in the preliminary figures. These are not reasonable figures and the source and resolution of this problem have to be determined. A major source of the problem seems to be a bias in the reporting of State of birth in the 1970 census, specifically the tendency to report State of occurrence of birth in the census rather than State of residence of the mother when the child was born.

For the ages 65 and over, we are trying to employ the aggregated data on Medicare enrollments. There are difficult problems here, however, because people may report a mailing address for Medicare different from their residence on April 1, the census date. For example, the Bureau enumerates many people in Florida who do not report Florida as their mailing address in Medicare, so that the census figure for Florida appears to be an "overcount."

We are also currently engaged in planning the methodology for the calculation of estimates for the intermediate ages 35 to 64. These ages will present special problems, since there is no direct basis for estimating them. If the patterns of variation in coverage rates by States under 35 and 65 and over show some similarity, we may consider interpolating these patterns to the intermediate ages. Once coverage rates for females can be determined satisfactorily, expected sex ratios can be employed, but it will be difficult to derive them because of the migration factor.

The degree of error in estimates of census coverage derived by demographic analysis or other methods can only be considered theoretically. Since the true population is not really known, the accuracy of the estimates cannot be measured very directly or very precisely. Accuracy can be measured only indirectly; e.g., in terms of the demographic logic of the method; the consistency of results obtained by use of alternative "equally" reasonable data, basic assumptions, or methods; and the variation in results obtained by statistical sensitivity tests, which measure the bias involved in specific assumptions; etc. We plan to use some or all of these methods in evaluating our estimates for States derived by demographic analysis. As noted before, there is a question as to whether this procedure will be successful.

Areas Within States

Problems in application of synthetic method. The problems of developing reliable estimates of underenumeration for areas within States are much greater than those for the States. It has been proposed that the synthetic method employing national net undercount rates for age, sex, and race groups be used to derive estimates of corrected population figures for counties and cities in the absence of immediate satisfactory alternatives. Such a procedure is computationally possible, of course, but in view of the unknown but necessarily wide variation in these rates for cities and counties, the procedure is technically very weak.

The proposal to use the synthetic method in this way raises questions regarding the accuracy of the method when applied to counties and cities as compared with their application to States, and particularly regarding the theoretical problems in error measurement. When we make the assumption that the national rates of underenumeration in specific age, sex, and race categories apply to each State, we are, in effect, assuming that there is no dispersion around the U.S. average for these categories. The extent of the dispersion of the rates for the States around the national average depends upon the factors that affect the degree of underenumeration and their relative importance in each State. There may be sufficient heterogeneity of "census" conditions in some States to produce coverage rates for these States that are not unlike the U.S. figure, but this would not be true for most States.

Similarly, if we make the assumption that the national rates of underenumeration apply to each county within the State, we are in effect assuming both that there is no dispersion of State figures around the U.S. average and no dispersion of county figures around the State averages. The combination of the actual dispersion of the State values around the national values and of the county values around the State values strongly suggests that the county values may deviate by considerable amounts from the national average and

hence that estimates based on the synthetic method for counties would be subject to major errors. Although synthetic estimates may possibly serve a useful illustrative purpose with State data, they may be more misleading than useful for counties and cities.

Alternative methods. Any refined work for making estimates of coverage for counties and cities has to be dealt with separately from the work for States because of important differences in the data available and, hence, in the possible methods to be used. A method involving demographic analysis similar to that being employed for the States cannot be used because the required data on the distribution of the population by place of birth are not available.

If it proves possible to develop adequate estimates of net underenumeration for States by the method of demographic analysis or some combination of methods, it may then be useful to consider applying the modified synthetic method to the principal areas within each State, using variations of the net undercount rates for race, age, and sex categories applicable to a particular State. We may also consider developing and applying a correlation-estimating equation relating underenumeration rates with median income, education attainment, migration rates, and other characteristics, for States. The resulting estimates would be subject to considerable error since it is rather evident at this juncture that the "demographic" estimates for States themselves can be only moderately satisfactory.

We also want to consider use of proxy variables that may reflect more directly the relative levels of coverage of the population of counties and cities. Even if we could identify such variables, we would have to be concerned about the availability of data on them for small areas as well as States and the degree of the relationship between the proxy variables and the coverage rate. The proxy measures that seem relevant are the proportion of the population of the area for which imputations of persons were made in the census because they could not be actually interviewed and the proportion of the population for which one or more allocations of demographic or social characteristics were made in the census returns. Although suggestions have been made to use these measures as proxy variables,[28] the procedure does not now appear to provide a very satisfactory basis for measuring local variation in net underenumeration. The necessary census data on the population added by imputation because of noninterview are not readily available for counties and cities and there is doubt that the two variables mentioned are highly correlated with the census omission rate. At this time there is no way to validate the use of imputations or allocations as proxy variables for underenumeration. If satisfactory estimates of coverage for States can be developed, the relationship between coverage rates and imputation rates or allocation rates for States can be examined.

We shall consider carefully the suggestions of the Committee on Census Enumeration of the National Academy of Sciences regarding possible analytical studies of small-area census coverage that may aid in the discovery of the demographic, social, and economic characteristics of an area associated with coverage errors.[29] The position of the Committee was quite guarded, however, regarding the possibility of developing usable quantitative estimates of coverage error for small areas. It does not now appear likely that census underenumeration for counties and cities can be measured accurately and on a comparable basis. The necessary data and methodology do not exist. Unless a sound methodology is employed, one risks producing estimates of underenumeration that have greater errors of estimate than the underenumeration rates being measured. Later research may lead to a change in our preliminary view.

IMPLICATIONS FOR POLITICAL REPRESENTATION AND DISTRIBUTIONS OF PUBLIC FUNDS

A specific purpose of this report is to assess illustratively the effect of underenumeration on representation in legislative bodies at various levels of government and on the distribution of funds under various public programs. In connection with political representation we will consider separately the effect on Congressional apportionment and the effect on Congressional districting, State legislative districting, and city councilmanic districting. There are two dimensions to the consideration of the public distribution of funds—first, whether the funds are allotted on a per capita basis or apportioned on the basis of a fixed total and, second, whether the allocation or apportionment is made on the basis of total population, some segment of the population, or other factors in addition to population, such as per capita income.

Political Representation

Congressional apportionment. Principal interest lies in the possible effect of underenumeration in the census on the apportionment of representatives from the States to the House of Representatives. Under the method of "equal proportions," the method used to determine the number of Congressmen from each State, the shift in

[28] National Academy of Sciences, **America's Uncounted People**, Report of the Advisory Committee on Problems of Census Enumeration, Division of Behavioral Sciences, National Research Council, edited by Carole W. Parsons, Washington, D.C., 1972, pp. 107-109.

[29] National Academy of Sciences, **America's Uncounted People**, op. cit., Chapter 6.

the population of a State required to produce a change in the State's representation, may be merely a few hundred persons or a few hundred thousand persons, depending on the precise populations of all the States.

When the population figures for the States are adjusted for underenumeration by the basic synthetic method, employing the preferred national rates of net undercounts for each age, sex, and race group (three groups), Congressional apportionment remains unchanged from the apportionment now in effect. If the test calculations are based on synthetic estimates modified to allow for differences in the proportion at the low-income level from State to State for whites and Negroes separately, as described earlier, again the apportionment remains unaffected. When variations in median family income are taken into account, two States are affected, Alabama (7 to 8 representatives) and California (43 to 42 representatives). When variations in educational attainment are taken into account, again two States are affected, Alabama (7 to 8) and Oklahoma (6 to 5).

Congressional, State, and local districting. It has been suggested that the use of corrected census data in the delineation of Congressional districts, State legislative districts, or city councilmanic districts could have an important effect on these delineations. In particular, it has been suggested that, in view of the relatively greater omission rate for some parts of States or cities as compared with the other parts of the same States or cities, an additional representative (Congressman, State legislator or councilman) might be elected to the appropriate ligeslative body from the former areas at the expense of the latter areas, if the census counts were corrected.

In the reconstitution of the legislative districts in a State or city the total number of districts represented in the Federal Congress or State or city legislative body does not change. Given an apportionment formula for determining representation in a given legislative body (Congress, State legislature, city council), a new legislative district can be created only if it is carved out of existing districts in a State or city, one of which would be eliminated. The possibility of the occurrence of such a situation depends on the average size of the legislative districts, the coverage rates of the major groups of the population (e.g., race groups), the proportionate distribution of the population by major groups (e.g., race groups), and the number of contiguous legislative districts with high undercoverage rates. Such a situation is more likely to arise in a large city, where several adjacent councilmanic districts may be inhabited largely by blacks.

A relatively simple analysis gives a generalized indication of the possibility of an increase in the number of Congressmen, legislators, or councilmen for a designated part of a State or city **specifically resulting from a coverage correction** in the 1970 census (with a corresponding loss in the number of legislators for the remaining part). Table D shows model values for the number of contiguous legislative districts and the total contiguous population which would be minimally required to establish an additional legislative district, corresponding to various coverage rates by race, various proportions of whites and blacks, and various average populations per legislative district. Model results are shown for three levels of coverage rates for the principal races—the national average coverage rates, the national averages plus one mean deviation based on State data (median family income series), and the national averages minus one mean deviation based on State data (median family income series); for five levels of the proportion black in the population; and for seven levels of the average population per legislative district.

From these model calculations, we see that the possibility of a shift in the number of Congressional districts for the regions of a State is very small. For example, a population of about 9 million persons residing in about 20 contiguous Congressional districts in a particular region of a State would be minimally necessary to establish another Congressional district in that region of the State, assuming that the average population per Congressional district is 465,000, that the coverage rate for each race group corresponds to the United States average (1.9 percent for whites; 7.7 percent for blacks), and that half the population is black. It is also assumed that the population of the remainder of the State was completely enumerated, but this population also requires some adjustment, which would offset gains in the first area. No State qualifies for a shift in the regional location of its districts on this basis. Even if the population of a broad area of a State is 75 percent black and the undercoverage rates of whites and blacks are well above average (2.2 percent and 9.2 percent, respectively), a contiguous population of nearly 6 million persons residing in 12 contiguous Congressional districts in a particular region of a State would be minimally required to establish another Congressional district in that region of the State.

The chances are somewhat greater, but still small, for a shift in State legislative districts or city councilmanic districts in spite of the possibility of higher omission rates and their concentration in one part of the State or city. If we assume, for example, that the undercoverage rates of whites and blacks are well above average (2.2 percent and 9.2 percent, respectively), that the population of a major section of a city is largely black (75 percent), and that each councilman represents 10,000 persons, then a population of more than 120,000 persons residing in about 12 contiguous councilmanic districts in a particular section of the city would be minimally required to establish another district in that area of the city. Again, undercoverage adjustments for the remainder of the city would reduce the likelihood that a shift in the location of the districts would occur.

Table D. Minimal Model Values for the Number of Contiguous Legislative Districts and the Total Contiguous Population Required to Establish an Additional District, According to the Underenumeration Rate by Race, the Population Distribution by Race, and the Average Population Per District

Underenumeration rate and percent black	Approximate number of contiguous legislative districts	Total contiguous population required to establish an additional district						
		Average population of legislative district						
		465,000	400,000	200,000	100,000	50,000	25,000	10,000
Medium underenumeration rate—white 1.9 percent, black 7.7 percent[1]								
Percent black								
0	52	24,008,000	20,652,000	10,326,000	5,163,000	2,582,000	1,291,000	516,000
25	28	13,141,000	11,304,000	5,652,000	2,826,000	1,413,000	707,000	283,000
50	20	9,049,000	7,784,000	3,892,000	1,946,000	973,000	487,000	195,000
75	15	6,896,000	5,932,000	2,966,000	1,483,000	742,000	371,000	148,000
100	12	5,575,000	4,796,000	2,398,000	1,199,000	600,000	300,000	120,000
Low underenumeration rate—white 1.7 percent, black 6.1 percent[2]								
Percent black								
0	58	26,886,300	23,128,000	11,564,000	5,782,000	2,891,000	1,445,500	578,200
25	34	15,916,950	13,692,000	6,846,000	3,423,000	1,711,500	855,750	342,300
50	24	11,304,150	9,724,000	4,862,000	2,431,000	1,215,500	607,750	243,100
75	19	8,765,250	7,540,000	3,770,000	1,885,000	942,500	471,250	188,500
100	15	7,156,350	6,156,000	3,078,000	1,539,000	769,500	384,750	153,900
High underenumenation rate—white 2.2 percent, black 9.2 percent[3]								
Percent black								
0	44	20,673,900	17,784,000	8,892,000	4,446,000	2,223,000	1,111,500	444,600
25	24	11,020,500	9,480,000	4,740,000	2,370,000	1,185,000	592,500	237,000
50	16	7,509,750	6,460,000	3,230,000	1,615,000	807,500	403,750	161,500
75	12	5,696,250	4,900,000	2,450,000	1,225,000	612,500	306,250	122,500
100	10	4,589,550	3,948,000	1,974,000	987,000	493,500	246,750	98,700

[1]National average rate of underenumeration.
[2]National average rate of underenumeration minus one mean deviation based on State data (median family income series).
[3]National average rate of underenumeration plus one mean deviation based on State data (median family income series).

It may be maintained that a more important, and also a more likely, consequence of correcting census data for underenumeration than the creation of an additional legislative district is the possibility of additional influence of disadvantaged segments of the population in existing districts. A legislator's awareness of the exact socioeconomic and ethnic composition of a constituency, combined with a knowledge of the views particular segments of this constituency have on public matters, could influence the legislative decision-making process. If the legislator knows that a given segment of the constituency is more numerous than the census indicates and to what extent this is true, presumably the views of the group would receive more weight. Furthermore, disadvantaged groups might be represented in larger proportions in public or private programs as a result of their numbers; this might lead to a change in attitudes on the part of the general population and greater support for the needs of the disadvantaged groups. This is apart from the fact that, regardless of "census enumeration status," everyone has the right to vote and can wield power through the use of the ballot.

A different issue, considered by the courts and of major importance to disadvantaged groups of the population, is whether voting district lines are drawn in a manner which minimizes the voting influence of such groups. Consideration of whether a given set of adjustments for underenumeration in geographic areas would have any impact on how voting district boundaries are drawn would involve a major study in itself and is outside the scope of the Census Bureau's competence. Hence, discussion of this topic was not included in this report.

Implications for one-man one-vote rule. Possible geographic variation in the undercount rate has implications for the implementation of the Supreme Court one-man one-vote rule. In a series of decisions (**Baker v. Carr**, 1962; **Gray v. Sanders**, 1963; **Wesberry v. Sanders**, 1964; **Kirkpatrick v. Preisler**, 1969) the Supreme Court ruled that Congressional districts, as well as State legislative districts, should be equal in size, so that each legislator would represent an equal number of constituents. The court did not specify the exact degree of

variation in population which would be acceptable under the rule, but the more recent decisions clearly required the States to strive for equality in the size of legislative districts. We want to consider illustratively, using data for New Jersey, whether possible variations in the undercount rate would introduce a much larger variation in the population of Congressional districts and State legislative districts than pertains with respect to the census counts.

The State of New Jersey contains 15 Congressional districts, with an average population in 1970 of 477,877 according to the census counts and 490,801 according to census figures corrected for underenumeration using the basic synthetic method (race only). The average deviation of the population of the 15 districts from the average size of the districts is only 0.1 percent for the census figures and 0.4 percent for the corrected figures. A much more stringent test is the relative difference between the population of the largest district and the population of the smallest district. The percent excess in population of the largest district over the smallest district is 1.0 percent for the census counts and 3.2 percent for the corrected figures. On the basis of corrected figures, the largest district exceeds the average by 2.4 percent.

To illustrate the possible effect of census undercounts on the relative size of the population of the State legislative districts, the basic synthetic method (race only) was used to adjust the population of the forty legislative districts into which the State of New Jersey was divided after the 1970 census. The average population of the legislative districts is 179,204 according to the census counts and 184,050 according to the corrected figures. The average deviation of the population of the districts from the average size of the districts is 0.7 percent of the average population according to the census counts and 0.9 percent of the average according to the corrected figures. The percent excess of the population of the largest district over the population of the smallest district is much larger in each case but the adjustment for undercount makes little difference. The figures are 5.2 percent for the census counts and 6.8 percent for the corrected figures. The largest and smallest districts would differ from the average by only a fraction of these figures. On the basis of corrected data, the respective figures would be 4.0 percent and 2.6 percent.

The results would differ, of course, if the adjustment calculations were carried out for other States and/or other methods. Hence, caution is necessary in making generalizations on the basis of the illustrations given.

Distribution of Public Funds

Some issues involved in adjusting official data. We come next to a discussion of the implications of underenumeration in the 1970 census for disbursements of public funds. In this connection it is useful to consider, first, the basis by which the adequacy of disbursements is to be judged.

One criterion for determining the adequacy of a given allocation is the equity of that allocation. Perfect equity would be achieved if the allocation of funds were based on perfect data, but since perfect data and hence a perfect allocation are not attainable, the principle of equity is not easy to apply. Application of the principle of equity must be related to the criteria of accuracy which are used. We can identify several different criteria of accuracy relating to the estimates for a class of governmental units, such as, the average percentage difference between the estimate and the unknown true figure, the percent of the units for which the estimate differs from the unknown true figure by some stated large percentage (e.g., 5 or 10 percent), or the proportion of all units for which the estimate exceeds or falls below the unknown true figure. One distribution of funds may have a lower average percent "error" than another, while the second distribution may have a lower proportion of extreme errors. We may wish to be more concerned about an under-allocation of 10 percent for some area than the fact that the average error of the method is "lowest." Under this criterion of equity, we may prefer to reduce the funds assigned to several areas and even raise the average error, in order to increase substantially the funds assigned to the single area which has been disadvantaged. Or we might take the contrary view and prefer a series which has the lower average error. Note, however, that the errors are not really known and may be unknowable.

There are practical issues in changing the apportionment of funds abruptly on the presumed but uncertain basis of greater accuracy. In our illustrative calculations, under a change in the apportionment of funds based on a correction of the basic data for undercoverage, many more areas lose money than gain money. Local communities which are not favored by the results may dispute both the principle of correcting census data and the particular method of correcting them. Any method that we might use would be subject to serious question, and it may be difficult to defend the use of estimates based on partly arbitrary criteria in lieu of "counts" in this situation.

Another important consideration is the need to incorporate corrections for all components in the apportionment formula that may affect the final distribution. Adjustment of the population counts for underenumeration may be possible and desirable in some formulas and not in others because corrections for errors in related data required in the latter formulas are not available. For example, if an apportionment formula, such as General Revenue Sharing, calls for data on population and aggregate income, only insofar as corrections are made for the income data does it appear

justifiable to correct the population data, since the corrections are known to offset one another in some cases and to be additive in others.

The interdependence of the Federal statistical system suggests considerable caution before the census counts for geographic units are altered. Population data are used widely in combination at many different geographic levels and with many other types of statistical series for which adequate corrections cannot be obtained.

Effect of adjustment for population only. Many Federal programs involve disbursement of funds on the basis of population. Sometimes population figures are used to determine the areas that qualify for certain funds, which may then be distributed on the basis of various factors other than or in addition to population. Funds may be distributed on a per capita basis and, hence, the total amount distributed depends on the number of persons affected. Typically, however, Federal programs have an apportionment feature, that is, a pre-established sum of money is distributed to a class of governmental units.

The special attention given to the implications of underenumeration of population in the census on the apportionment of public funds should not obscure the fact that there are many State and local programs in which funds are allocated on a per capita basis. Under such circumstances any allocation of funds is directly affected by the underenumeration of population, and as a result groups in special classes or in particular geographic areas may receive less than their proper share of public services. This consequence of underenumeration is much more apparent than the implications of underenumeration that are discussed here and is not considered further.

It is apparent that, if money is distributed solely on the basis of population under an apportionment formula and if the population of the coordinate governmental units is adjusted uniformly for underenumeration by a common percentage, however large, the funds apportioned to each governmental unit would be the same after the adjustment as before the adjustment. Shifts in the funds apportioned depend, therefore, on the variation in the underenumeration rates among the coordinate governmental units.

The synthetic procedure employing corrections for age, sex, and race (white, black, other) provides one set of corrected figures that reflect variation between the States in the overall rate of population underenumeration and that, therefore, can be employed to illustrate the effect of underenumeration on apportionment formulas. The size and variation among the States of these rates of underenumeration are seen to be much greater than the size and variation of the percentage shifts in the funds apportioned among the States resulting from the use of these very underenumeration rates. Under an apportionment rule based on population size, correction of the population figures by the synthetic procedure using the national age-sex-race specific undercount rates makes little difference in the funds distributed for the vast majority of States.

The rates of underenumeration would vary from 1.3 percent to 3.8 percent, excluding the District of Columbia (6.4 percent), but the shifts in apportioned funds would vary from 0.0 percent to 1.3 percent (with the District of Columbia at 3.9 percent). The population shifts by 2 percent or more in 35 States and the District of Columbia and by 3 percent or more in eight States (all 3 to 4 percent) and the District of Columbia, but the funds apportioned would shift by 2 percent or more only in the District of Columbia (table E). Forty-six States would gain or lose less than one percent of the funds apportioned to them and about half of these would gain or lose less than one-half percent. The funds apportioned among the States would shift by only 0.6

Table E. Number of States With Specified Shifts in Apportioned Funds According to the 1970 Census Population Corrected by the Basic Synthetic Method

(Based on national rates of net underenumeration for age, sex, and race groups)

Percent shift	Population	Apportioned funds		
		Total	Gain	Loss
Total	51	51	18	33
Under 1.0	-	46	14	32
1.0 to 1.9	15	4	3	1
2.0 to 2.9	27	-	-	-
3.0 to 3.9	8	-	-	-
4.0 and over	[1]1	[1]1	[1]1	-

[1]District of Columbia.

percent on the average. In general, simple apportionment formulas dampen considerably the effect of any variable adjustment of a set of data.

Many more States would lose money (33) than would gain money (18) under the changed apportionment. Under the assumption that the total sum to be apportioned is $1 billion, seven States and the District of Columbia would experience gains in excess of $100,000 (0.01 percent of the total) and four States would experience losses in excess of $100,000. The States in addition to the District of Columbia, which would experience large absolute gains are all located in the South—Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia—and the States which would experience large absolute losses are all located in the North and West—California, Massachusetts, Minnesota, and Wisconsin. The variation in the proportion of black population from State to State accounts almost entirely for these variations in apportioned funds.

The funds apportioned on the basis of population figures corrected by the synthetic formula employing corrections for race only (white, black, other races) are not very different from the funds apportioned on the basis of population corrected jointly by age, sex, and race. The percent shifts in apportioned funds, compared with the shifts in population, under the "race only" correction, are as follows:

Percent shift	Basic synthetic method--race only	
	Population	Apportioned funds
Total.....	51	51
Under 1.0.....	1	46
1.0 to 1.9.....	16	4
2.0 to 2.9.....	25	-
3.0 to 3.9.....	7	[1]1
4.0 and over.....	[1]2	-

[1]Includes the District of Columbia.

(This result recalls the similarity of the underenumeration rates under these two synthetic procedures.) The shift in the apportionment when the population figures are corrected by the synthetic formula employing corrections for the population of Spanish heritage (arbitrarily set at the same rate as for the black population) in addition to race remains quite small. The percent shifts in apportioned funds, compared with the shifts in population, under the "race and Spanish heritage" correction, are as follows:

Percent shift	Basic synthetic method--race and Spanish heritage	
	Population	Apportioned funds
Total.....	51	51
Under 1.0.....	1	43
1.0 to 1.9.....	19	7
2.0 to 2.9.....	22	-
3.0 to 3.9.....	7	[1]1
4.0 and over.....	[1]2	-

[1]Includes the District of Columbia.

Since the method depends heavily on the assumption of "no variation" in underenumeration rates for race groups, any question about the soundness of this assumption brings the above results into question. If, for example, the coverage rate is much better for those blacks with higher educational attainment and higher family income than for those with lower educational attainment and lower family income, then the national average coverage rate for blacks greatly understates the coverage rate for blacks in some States (and overstates it in others), and hence the use of the synthetic method results in an overstatement (or understatement) of the funds due to such States. Modifying the synthetic estimates to take low-income status, median family income, or educational attainment rates for each State, for whites and blacks separately, into account in determining rates of underenumeration for States has a more pronounced effect on the apportionment of funds than the use of the basic synthetic method. Yet, even in these cases the shifts in funds due to the coverage adjustment vary far less than the rates of underenumeration themselves (i.e., the shifts in population) and are typically much smaller, as shown in table F.

When the population is adjusted on the basis of median family income, it shifts by two percent or more in 35 States and the District of Columbia and by three percent or more in 10 States and the District of Columbia, but the funds apportioned shift by two percent or more in only 5 States. Forty-nine States and the District of Columbia would gain or lose less than three percent of the funds apportioned to them, 40 States would gain or lose less than one percent, and 18 of these would gain or lose less than one-half percent. The corresponding apportionment figures based on an adjustment in terms of the low-income proportion and of educational level are more concentrated at the lowest percents. Quite clearly, however the rates of underenumeration vary, the effect of such underenumeration on the distribution of funds is dampened considerably when a fixed total sum of money is apportioned.

Table F. Number of States With Specified Shifts in Apportioned Funds According to the 1970 Census Population Corrected by Various Modified Synthetic Methods

Percent shift	Proportion at low-income level		Median family income		Educational level	
	Population	Apportioned funds	Population	Apportioned funds	Population	Apportioned funds
Total.....	51	51	51	51	51	51
Under 1.0.....	1	44	1	40	1	42
1.0 to 1.9.....	19	[1]5	14	[1]6	20	6
2.0 to 2.9.....	23	2	25	4	20	[1]3
3.0 to 3.9.....	6	-	4	-	5	-
4.0 and over.....	[1]2	-	[1]7	1	[1]5	-

[1]Includes the District of Columbia.

Effect of adjustment for population and other factors (income). When the formula for distributing funds involves factors in addition to population, then the adequacy of the data on these additional factors also has a bearing on the adequacy of the allocations. Here, as when population alone is a factor, the effect of an adjustment of the factors on the allocation is far less when a fixed sum is apportioned among the constituent areas than when the total sum being distributed evolves directly from the application of the formula. Many Federal programs involve disbursement of funds on the basis of factors in addition to population, such as per capita income, and have an apportionment feature. Such programs include the State and Local Fiscal Assistance Act of 1972 (General Revenue Sharing), the Comprehensive Employment and Training Act of 1973, the Elementary and Secondary Education Act of 1965, the Vocational Education Act of 1963, and the Housing and Community Development Act of 1974.

Considerable interest now lies in the allocations under the General Revenue Sharing program because of the huge sums of money involved ($30.2 billion over the 5-year period, 1972 to 1976) and the number of governmental units directly receiving funds (38,700). The formulas for States and the governmental units within States, as specified in the Act, differ in several respects—the inclusion of two additional components in an alternative formula for States (urbanized population and State income tax collections), use of special constraints (upper and lower limits) in applying the formula for governmental units within States, and a different basis of determining aggregate income in the "tax effort" factor of the formulas for States and local governments. Nevertheless, the General Revenue Sharing formula may be viewed as basically involving three factors—population; per capita income, the ratio of aggregate money income to population; and "tax effort," the ratio of net taxes collected to aggregate personal income (States) or aggregate money income (local government units)—and may be represented very simply by:

$$P \div \frac{I}{P} \times \frac{T}{I} \quad \text{or} \quad T \div \left(\frac{I}{P}\right)^2 \quad \text{or} \quad T \times \left(\frac{P}{I}\right)^2$$

where P represents population, $\frac{I}{P}$ per capita income, and $\frac{T}{I}$ "tax effort."

In the application to States, the income data in the "tax effort" factor are provided by the Bureau of Economic Analysis (BEA) and represent aggregate personal income of a given State secured from administrative records. They are implicitly corrected for both the omission of the income of persons not enumerated and the understatement of the income of persons enumerated. The income component in the per capita income factor for States, total money income, is derived from the census and does suffer from these limitations. In the application of the formula to counties and cities, census data are used for the income component in the tax effort factor as well as in the per capita income factor, as the General Revenue Sharing Act specifies. (Note, therefore that at the State level I in per capita income and I in tax effort have different values whereas at the local level they are the same; and when I for States is adjusted as described below, they are approximately the same.)

If, in the calculation of the amounts of General Revenue Sharing money for States by the three-factor formula, population and per capita income are adjusted for the underenumeration of population and the omission of the income of persons not enumerated, on the

assumption that the per capita income of missed persons equals that of enumerated persons, then per capita income is not changed by the adjustment and the correction of the population factor alone modifies the result. Since this reduces virtually to a simple apportionment procedure involving a population adjustment, the effect is generally quite small, as we have already seen. The effect is still expected to be small even if the per capita income of missed persons is assumed to be somewhat lower than that of enumerated persons, as is probably the case, because of the small weight of missed persons in the total population.

The amounts allocated under General Revenue Sharing would be substantially altered for many States if the income component were fully adjusted for understatement, that is, if the income component in the per capita income factor were adjusted to include both the income not reported by persons enumerated as well as the income of persons missed in the census. For our illustrative calculations, adjusted estimates of total money income, consistent with the BEA data on aggregate personal income, were substituted for the census income data. Adjustments of census income data for States for understatement tend to be much larger than the adjustments of population for underenumeration. Income then emerges as the dominant element in the possible correction of revenue-sharing allocations for understatement of the components at the State level.

This finding is reflected in the illustrative allocations of revenue-sharing funds for States given in tables 3 and 4. These tables show the distribution of $5.3 billion, the amount which the Act specified should be distributed to State and local governments for calendar year 1972, the first year of the Act, according to two assumptions for correcting the population for undercoverage—the basic synthetic method and the synthetic method modified on the basis of median family income.

In the first series, population data adjusted by the basic synthetic method (age, sex, and race) and adjusted total money income data were substituted for census population data and census income data, respectively (table 3). Table G summarizes these calculations for regions in terms of the number of States that would gain or lose money as a result of the adjustments of

Table G. Number of States Gaining or Losing General Revenue Sharing Funds as a Result of the Adjustment of the Population Factor (Basic Synthetic Method), the Income Factor, or Both Factors, by Regions

("Net gain" or "net loss" refers to the effect of adjusting both the population factor and the per capita income factor jointly; gain or loss from population refers to the effect of adjusting the general population factor and the urbanized population factor; and the gain or loss from income refers to the effect of adjusting the per capita income factor. The adjustment of the per capita income factor includes a population adjustment based on the basic synthetic method (age, sex, and race) and an income adjustment incorporating the "BEA" income data)

Gain or loss	United States	North-east	North Central	South	West
Total	51	9	12	17	13
Net gain	20	3	1	10	6
Gain from population	9	-	-	9	-
Gain from income	8	-	-	8	-
Loss from income	[1]1	-	-	[1]1	-
Loss from population	11	3	1	1	6
Gain from income	11	3	1	1	6
Loss from income	(X)	(X)	(X)	(X)	(X)
Net loss	31	6	11	7	7
Gain from population	8	1	2	5	-
Gain from income	(X)	(X)	(X)	(X)	(X)
Loss from income	8	1	2	5	-
Loss from population	[2]23	5	9	[2]2	7
Gain from income	2	1	-	1	-
Loss from income	20	4	9	-	7

X Not applicable.
[1]District of Columbia.
[2]One State shows no change due to the income factor.

population and income. Separate tallies are shown for the number of States which would gain or lose money from the adjustment for both population and income, the adjustment for the population factor only (including urbanized population), and the adjustment for the per capita income factor only. Many more States would lose money (31) than would gain money (20). Sixteen States and the District of Columbia would gain money from the population adjustment considered separately, but eight of these would sustain a net loss in funds received as a result of the fact that the gain through the population adjustment is more than offset by a loss through the income adjustment. Most (five) of the latter States are in the South. The eight other States among the 16 would gain through the income adjustment as well as the population adjustment and, hence, would show a net gain in funds received. These eight States are all in the South.

Thirty-four States would lose funds as a result of the population adjustment considered separately. Eleven of these states, mostly (6) in the West, would show a net gain in funds received as a result of the fact that the gains from the income adjustment exceed the losses from the population adjustment. For most (20) of the 34 States losses from population would be combined with losses from income to produce larger net losses in funds received. These States are all in the North and West.

According to this series, the adjustment of the population factor is never responsible for any significant change in funds apportioned to the States under General Revenue Sharing (table 4). When the population factor alone (including urbanized population) is corrected, all 50 States shift by less than 2 percent (2.2 percent for the District of Columbia), 46 shift by less than 1 percent, and 27 shift by less than one-half of 1 percent. The effect of adjusting the per capita income factor is much greater, with 14 States showing shifts over 2 percent, 10 States over 3 percent, and 4 States over 6 percent. Still, 36 States and the District show shifts under 2 percent and 26 States show shifts under 1 percent. When the two factors are both adjusted at once, their effects may be additive and now 17 States show shifts in excess of 2 percent. Still, 33 States and the District of Columbia show shifts of less than 2 percent and 27 States and the District show shifts of less than 1 percent. (See table H.)

More States would gain revenue-sharing funds and fewer would lose funds if the synthetic method modified on the basis of median family income were used to adjust the population factor rather than the basic synthetic method (table 4 and table I). Thirteen States and the District of Columbia would gain funds from the adjustment of the population factor only and all of these except the District would show a net gain in revenue-sharing funds, even though four of these States would lose funds from the adjustment of the income factor only. Thiry-seven States would lose funds as a result of the population adjustment but nine of these would show a net gain in revenue-sharing funds because of the offsetting effect of the income adjustment. Most States (24) losing through the population adjustment would also lose through the income adjustment and hence would experience a net loss in revenue-sharing funds.

Table H. Number of States With Specified Percentage Shifts in Population and in Funds Apportioned Under General Revenue Sharing, According to Factor Adjusted: Population Adjustment by Basic Synthetic Method

(National coverage rates for population by age, sex, and race)

Percent shift	Population	Apportioned funds		
		Population only	Per capita income only	Population and per capita income
Total	51	51	51	51
Under 1.0	-	46	26	[1]28
1.0 to 1.9	15	4	[1]11	6
2.0 to 2.9	27	[1]1	4	7
3.0 to 3.9	8	-	4	4
4.0 to 4.9	-	-	2	2
5.0 to 5.9	-	-	-	-
6.0 and over	[1]1	-	4	4

[1]Includes the District of Columbia.

Table I. Number of States Gaining or Losing General Revenue Sharing Funds as a Result of the Adjustment of the Population Factor (Modified Synthetic Method Based on Median Family Income), the Income Factor, or Both Factors, by Regions

("Net gain" or "net loss" refers to the effect of adjusting both the population factor and the per capita income factor jointly; gain or loss from population refers to the effect of adjusting the general population factor and the urbanized population factor; and the gain or loss from income refers to the effect of adjusting the per capita income factor. The adjustment of the per capita income factor includes a population adjustment based on the modified (median family income) synthetic method and an income adjustment incorporating the "BEA" income data)

Gain or loss	United States	Northeast	North Central	South	West
Total	51	9	12	17	13
Net gain	22	1	1	15	5
Gain from population	13	-	-	13	-
Gain from income	9	-	-	9	-
Loss from income	4	-	-	4	-
Loss from population	9	1	1	2	5
Gain from income	9	1	1	2	5
Loss from income	(X)	(X)	(X)	(X)	(X)
Net loss	29	8	11	2	8
Gain from population	1	-	-	1	-
Gain from income	(X)	(X)	(X)	(X)	(X)
Loss from income	[1]1	-	-	[1]1	-
Loss from population	[2]28	[2]8	11	1	8
Gain from income	3	2	-	-	1
Loss from income	24	5	[illegible]	1	7

X Not applicable.
[1]District of Columbia.
[2]One State shows no change due to the income factor.

Even with the more extreme adjustments of the modified synthetic method, the allocations for the large majority of States (45) and the District of Columbia change less than 2 percent as a result of the population adjustment and the allocations for 42 States and the District change less than 1 percent (table J). The combined effect of the adjustment of population and per capita income is to cause changes of 3 percent or more in 13 States, but still 35 States and the District change less than 2 percent.

With an apportionment of $5.3 billion, under the assumption that the population factor should be adjusted by the basic synthetic method and the per capita income factor should be fully adjusted for understatement of income and population, two States would gain more than $3 million (less than 0.1 percent of the national total) and two States would lose more than $3 million. The former States are Florida and Alabama, and the latter States are New York and Iowa. When the synthetic method modified on the basis of median family income is used to adjust the population, five States gain more than $3 million and five States lose more than $3 million. The States which would experience large absolute gains are all located in the South and the States which would experience large absolute losses are all located in the North and West.

The role of the income component is even more dominant when the General Revenue Sharing formula is applied to counties and cities. As for the States, if the income component is corrected solely for the omission of the income of those missed in the census and if it is assumed that the per capita income of missed persons equals or approximates that of enumerated persons, then the corrections of population and income in the per capita income factor tend wholly to offset one another, and there would remain only the adjustment of population in the population factor. At the local level, however, the income component in the tax effort factor also requires adjustment and if the adjustment is limited to the inclusion of the income of those missed, then the adjustments for the population factor and for the income component in the tax effort factor tend wholly

Table J. Number of States With Specified Percentage Shifts in Population and in Funds Apportioned Under General Revenue Sharing, According to Factor Adjusted: Population Adjustment by Modified Synthetic Method (Median Family Income)

Percent shift	Population	Apportioned funds		
		Population only	Per capita income only	Population and per capita income
Total	51	51	51	51
Under 1.0	1	[1]43	28	19
1.0 to 1.9	14	3	11	[1]17
2.0 to 2.9	25	4	[1]3	2
3.0 to 3.9	4	-	1	4
4.0 to 4.9	[1]5	1	4	4
5.0 to 5.9	1	-	-	-
6.0 and over	1	-	4	5

[1]Includes the District of Columbia.

to offset one another, as suggested by the formula $T \times \left(\frac{P}{I}\right)^2$. The adjustments for population and income then have virtually no effect on the revenue-sharing allocations at the county and city levels. If the income component is further corrected for the understatement of the income of those who were counted in the census, then quite clearly the income correction dominates the adjustments (since the adjustment is squared) and local areas with relatively small income corrections will be relatively favored. The constraints which the General Revenue Sharing Act calls for in the allocation formula for counties and cities tend to eliminate extreme differences in per capita allotments. They impose some qualifications on the generalization made here but the essential conclusion stands.

The Census Bureau has not carried out any illustrative calculations of corrected disbursements under General Revenue Sharing for areas within States. Such illustrative calculations have been presented elsewhere.[30] These all fail to make adequate allowance in the application of the formula for the understatement of the income component or to take account of the apportionment feature of the Act. The review of the data employed by the Office of Revenue Sharing in the calculation of the revenue-sharing allocations, conducted by the Stanford Research Institute at the request of the Office of Revenue Sharing, calls attention to the errors in the data on population and aggregate income and presents illustrative estimates of corrected allocations for the counties in a single State (California) and for local governmental units in three counties. For the county calculations the adjustment for population employs the basic synthetic method (race and Spanish origin only) and no adjustment is made in the per capita income factor or the income component of the tax effort factor. As expected, the changes in allocations are very small or trivial; most counties gain only 0.1 percent in funds, largely because California was estimated to gain 0.1 percent in funds. Similar results are obtained for the subcounty units for which illustrative figures are given.

Although the amounts of money shift only a little for most areas in the illustrative calculations of the Stanford Research Institute and in the other studies, even these shifts may not be in the direction of equity. Without an adequate adjustment of the income data in the calculations, the results may be misleading and less equitable than if no adjustment whatever is made. Our illustrative calculations indicate clearly that the results of applying the revenue-sharing formula are often counterintuitive and that one cannot anticipate the true size and even the true direction of change in revenue-sharing allotments on the basis of the assumed adjustments for the population factor alone.

[30]Robert B. Hill and Robert B. Steffes, "Estimating the 1970 Census Undercount for State and Local Areas," National Urban League Data Service, Washington, D.C., 1973. I. Richard Savage and Bernard M. Windham, **The Importance of Bias Removal in Official Use of United States Census Counts**, The Florida State University, Department of Statistics, Tallahassee, Florida, July 1973. Robert P. Strauss and Peter B. Harkins, **The 1970 Census Undercount and Revenue Sharing: Effect on Allocations in New Jersey and Virginia**, Joint Center for Political Studies, Washington, D.C., June 1974. Stanford Research Institute, **General Revenue Sharing Data Study**, Vol. III, **Evaluation of Current and Alternative Data Sources**, by W. C. Grindley et. al., prepared for the Office of Revenue Sharing, Department of the Treasury, Menlo Park, California, August 1974.

Table 1. RATES OF NET UNDERENUMERATION ACCORDING TO THE POPULATION CORRECTED BY THE BASIC SYNTHETIC METHOD AND BY VARIOUS MODIFIED SYNTHETIC METHODS, FOR STATES, DIVISIONS, AND REGIONS: 1970

(See text for explanation of methods)

Region, division, and State	Basic synthetic method		Modified synthetic method		
	Age, sex, and race	Race only	Proportion at low income level	Median family income	Educational attainment
United States, total	2.5	2.5	2.5	2.5	2.5
Northeast	2.4	2.4	2.3	2.1	2.3
New England	2.1	2.1	2.0	1.8	2.0
Maine	1.9	1.9	1.9	2.2	1.8
New Hampshire	1.9	1.9	1.8	1.9	1.8
Vermont	1.9	1.9	1.9	2.0	1.8
Massachusetts	2.1	2.1	2.0	1.8	2.0
Rhode Island	2.1	2.1	2.0	2.0	2.1
Connecticut	2.3	2.3	2.1	1.8	2.1
Middle Atlantic	2.6	2.5	2.3	2.2	2.4
New York	2.6	2.6	2.4	2.2	2.4
New Jersey	2.6	2.5	2.3	2.0	2.4
Pennsylvania	2.4	2.4	2.3	2.2	2.3
North Central	2.4	2.4	2.2	2.1	2.3
East North Central	2.5	2.5	2.3	2.1	2.4
Ohio	2.5	2.5	2.3	2.1	2.3
Indiana	2.3	2.3	2.2	2.1	2.2
Illinois	2.7	2.7	2.5	2.1	2.5
Michigan	2.6	2.6	2.3	2.0	2.4
Wisconsin	2.1	2.1	2.0	1.9	2.0
West North Central	2.2	2.1	2.1	2.2	2.1
Minnesota	2.0	1.9	1.9	1.8	1.9
Iowa	2.0	2.0	1.9	2.0	1.9
Missouri	2.5	2.5	2.4	2.5	2.5
North Dakota	1.9	1.9	1.9	2.3	1.9
South Dakota	1.9	1.8	1.9	2.3	1.8
Nebraska	2.1	2.1	2.0	2.2	2.0
Kansas	2.2	2.2	2.1	2.3	2.1
South	3.0	3.1	3.0	3.6	3.3
South Atlantic	3.1	3.2	3.1	3.4	3.4
Delaware	2.8	2.8	2.6	2.5	2.7
Maryland	3.0	3.0	2.7	2.3	2.9
District of Columbia	6.4	6.1	5.1	4.2	5.1
Virginia	3.0	3.0	2.9	3.0	3.2
West Virginia	2.0	2.1	2.2	2.7	2.4
North Carolina	3.2	3.2	3.2	3.9	3.6
South Carolina	3.7	3.7	3.8	4.7	4.5
Georgia	3.4	3.5	3.4	4.1	4.0
Florida	2.8	2.8	2.8	3.2	2.9
East South Central	3.0	3.1	3.2	4.4	3.6
Kentucky	2.3	2.3	2.4	2.9	2.7
Tennessee	2.8	2.9	2.9	3.5	3.1
Alabama	3.3	3.5	3.8	4.8	4.0
Mississippi	3.8	4.1	4.5	7.2	5.1
West South Central	2.8	2.8	2.9	3.5	3.0
Arkansas	2.9	3.0	3.2	4.8	3.5
Louisiana	3.6	3.7	3.8	5.1	4.2
Oklahoma	2.3	2.2	2.3	2.8	2.2
Texas	2.7	2.7	2.6	2.9	2.6
West	2.2	2.1	2.0	1.9	1.9
Mountain	2.0	2.0	1.[illegible]	2.0	1.9
Montana	1.9	1.8	1.8	2.0	1.8
Idaho	1.9	1.9	1.9	2.1	1.8
Wyoming	1.9	1.9	1.9	2.0	1.8
Colorado	2.1	2.1	2.0	2.0	1.9
New Mexico	1.9	1.9	2.0	2.2	1.8
Arizona	2.0	2.0	1.9	2.0	1.9
Utah	1.9	1.9	1.9	1.9	1.8
Nevada	2.3	2.2	2.1	1.9	2.1
Pacific	2.2	2.2	2.0	1.8	2.0
Washington	2.0	2.0	1.9	1.8	1.9
Oregon	2.0	2.0	1.9	1.9	1.9
California	2.3	2.3	2.1	1.9	2.1
Alaska	2.1	1.8	1.6	1.2	1.6
Hawaii	1.3	0.8	0.8	0.7	0.7

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Table 2. DISTRIBUTION OF ONE BILLION DOLLARS BY STATES, DIVISIONS, AND REGIONS ACCORDING TO THE 1970 CENSUS POPULATION COUNT AND THE 1970 CENSUS POPULATION CORRECTED BY THE BASIC SYNTHETIC METHOD AND BY VARIOUS MODIFIED SYNTHETIC METHODS

(See text for explanation of methods. Numbers in thousands)

Region, division, and State	Census count	Basic synthetic method[1]	Modified synthetic method: Proportion at low income level	Modified synthetic method: Median family income	Modified synthetic method: Educational attainment	Difference from census count: Basic synthetic method[1] Amount	Basic synthetic method[1] Percent	Modified synthetic method: Proportion at low income level Amount	Proportion at low income level Percent	Median family income Amount	Median family income Percent	Educational attainment Amount	Educational attainment Percent
United States, total	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	-	-	-	-	-	-	-	-
Northeast	241,348	241,066	240,863	240,238	240,782	-283	-0.1	-485	-0.2	-1,111	-0.5	-586	-0.2
New England	58,293	58,028	58,011	57,878	57,968	-265	-0.5	-282	-0.5	-415	-0.7	-325	-0.6
Maine	4,889	4,857	4,862	4,873	4,855	-32	-0.7	-27	-0.6	-16	-0.3	-35	-0.7
New Hampshire	3,630	3,607	3,607	3,605	3,604	-23	-0.6	-23	-0.6	-25	-0.7	-26	-0.7
Vermont	2,188	2,174	2,176	2,177	2,172	-14	-0.7	-12	-0.5	-12	-0.5	-16	-0.7
Massachusetts	27,993	27,861	27,853	27,778	27,829	-132	-0.5	-140	-0.5	-215	-0.8	-165	0.6
Rhode Island	4,673	4,649	4,651	4,646	4,650	-24	-0.5	-22	-0.5	-27	-0.6	-23	-0.5
Connecticut	14,920	14,880	14,862	14,800	14,858	-40	-0.3	-58	-0.4	-120	-0.8	-61	-0.4
Middle Atlantic	183,056	183,037	182,851	182,359	182,794	-18	-	-205	-0.1	-696	-0.4	-262	-0.1
New York	98,754	89,831	89,712	89,426	89,660	+77	-0.1	-42	-	-328	-0.4	-94	-0.1
New Jersey	35,270	35,275	35,218	35,078	35,226	+4	-	-52	-0.1	-193	-0.5	-44	-0.1
Pennsylvania	58,031	57,931	57,921	57,856	57,907	-100	-0.2	-110	-0.2	-175	-0.3	-124	-0.2
North Central	278,382	277,921	277,763	277,122	277,616	-482	-0.2	-619	-0.2	-1,260	-0.5	-766	-0.3
East North Central	198,059	197,928	197,735	197,083	197,680	-132	-0.1	-324	-0.2	-976	-0.5	-380	-0.2
Ohio	52,412	52,357	52,318	52,173	52,303	-55	-0.1	-94	-0.2	-239	-0.5	-110	-0.2
Indiana	25,555	25,495	25,479	25,428	25,471	-60	-0.2	-76	-0.3	-127	-0.5	-84	-0.3
Illinois	54,685	54,762	54,685	54,458	54,669	+77	+0.1	-	-	-227	-0.4	-16	-
Michigan	43,669	43,683	43,622	43,430	43,621	+14	-	-47	-0.1	-239	-0.5	-48	-0.1
Wisconsin	21,738	21,630	21,631	21,594	21,616	-108	-0.5	-107	-0.5	-144	-0.7	-122	-0.6
West North Central	80,323	79,993	80,028	80,039	79,936	-330	-0.4	-295	-0.4	-284	-0.4	-386	-0.5
Minnesota	18,722	18,608	18,614	18,586	18,592	-114	-0.6	-108	-0.6	-136	-0.7	-131	-0.7
Iowa	13,900	13,818	13,826	13,830	13,907	-82	-0.6	-74	-0.5	-71	-0.5	-93	-0.7
Missouri	23,015	23,003	23,009	23,005	22,995	-12	-0.1	-6	-	-10	-	-19	-0.1
North Dakota	3,040	3,019	3,023	3,031	3,020	-21	-0.7	-17	-0.6	-9	-0.3	-20	-0.6
South Dakota	3,278	3,255	3,259	3,269	3,253	-24	-0.7	-19	-0.6	-9	-0.3	-25	-0.8
Nebraska	7,301	7,265	7,269	7,278	7,257	-36	-0.5	-32	-0.4	-23	-0.3	-44	-0.6
Kansas	11,066	11,025	11,029	11,040	11,012	-41	-0.4	-37	-0.3	-26	-0.2	-55	-0.5
South	308,993	310,423	310,858	312,512	311,387	+1,430	+0.5	+1,865	+0.6	+3,519	+1.1	+2,393	+0.8
South Atlantic	150,915	151,823	151,850	152,305	152,219	+908	+0.6	+935	+0.6	+1,389	+0.9	+1,304	+0.9
Delaware	2,697	2,703	2,700	2,695	2,700	+6	+0.2	+3	+0.1	-2	-0.1	+3	+0.1
Maryland	19,300	19,393	19,345	19,260	19,366	+93	+0.5	+45	+0.2	-40	-0.2	+66	+0.3
District of Columbia	3,722	3,874	3,825	3,786	3,824	+152	+4.1	+103	+2.8	+64	+1.7	+102	+2.7
Virginia	22,872	22,985	22,972	22,989	23,025	+112	+0.5	+100	+0.4	+117	+0.5	+152	+0.7
West Virginia	8,582	8,537	8,565	8,597	8,566	-45	-0.5	-17	-0.2	+15	+0.2	-16	-0.2
North Carolina	25,006	25,167	25,198	25,349	25,278	+161	+0.6	+192	+0.8	+343	+1.4	+272	+1.1
South Carolina	12,746	12,891	12,921	13,041	13,002	+145	+1.1	+175	+1.4	+295	+2.3	+257	+2.0
Georgia	22,583	22,789	22,809	22,946	22,927	+207	+0.9	+226	+1.0	+363	+1.6	+344	+1.5
Florida	33,407	33,483	33,515	33,641	33,530	+76	+0.2	+108	+0.3	+234	+0.7	+123	+0.4
East South Central	63,004	63,293	63,524	64,204	63,683	+290	+0.5	+520	+0.8	-1,200	-1.9	-680	-1.1
Kentucky	15,840	15,800	15,838	15,898	15,864	-40	-0.3	-2	-	-57	-0.4	-24	-0.1
Tennessee	19,308	19,356	19,396	19,503	19,422	+48	+0.3	-88	-0.5	-195	-1.0	+113	+0.6
Alabama	16,947	17,083	17,148	17,348	17,200	-137	-0.8	-201	-1.2	-401	-2.4	-253	+1.5
Mississippi	10,908	11,054	11,142	11,455	11,198	+146	+1.3	-234	-2.1	+547	+5.0	-290	-2.7
West South Central	95,074	95,307	95,484	96,003	95,484	+232	+0.2	-410	-0.4	+929	+1.0	+410	+0.4
Arkansas	9,463	9,493	9,540	9,690	9,558	-29	-0.3	-77	-0.8	+227	+2.4	+95	+1.0
Louisiana	17,926	18,118	18,179	18,404	18,244	+192	+1.1	+253	+1.4	+478	+2.7	+319	+1.8
Oklahoma	12,393	12,553	12,569	12,620	12,543	-40	-0.3	-24	-0.2	+27	+0.2	-50	-0.4
Texas	55,092	55,144	55,196	55,290	55,139	+51	+0.1	-104	-0.2	+197	+0.4	+46	+0.1
West	171,278	170,591	170,517	170,128	170,235	-685	-0.4	-759	-0.4	-1,148	-0.7	-1,041	-0.6
Mountain	40,759	40,521	40,547	40,540	40,476	-237	-0.6	-212	-0.5	-219	-0.5	-282	-0.7
Montana	3,417	3,393	3,395	3,399	3,389	-24	-0.7	-22	-0.6	-18	-0.5	-27	-0.8
Idaho	3,508	3,484	3,488	3,494	3,482	-24	-0.7	-20	-0.6	-14	-0.4	-26	-0.7
Wyoming	1,636	1,625	1,626	1,627	1,624	-11	-0.7	-10	-0.6	-9	-0.5	-12	-0.7
Colorado	10,861	10,811	10,812	10,799	10,791	-50	-0.5	-49	-0.5	-61	-0.6	-69	-0.6
New Mexico	4,999	4,965	4,975	4,982	4,961	-34	-0.7	-21	-0.5	-18	-0.4	-38	-0.8
Arizona	8,721	8,668	8,676	8,671	8,664	-53	-0.6	-45	-0.5	-50	-0.6	-57	-0.7
Utah	5,212	5,177	5,181	5,179	5,172	-36	-0.7	-31	-0.6	-33	-0.6	-40	-0.8
Nevada	2,405	2,398	2,395	2,389	2,393	-6	-0.3	-10	-0.4	-16	-0.7	-12	-0.5
Pacific	130,518	130,069	129,970	129,588	129,759	-448	-0.3	-548	-0.4	-930	-0.7	-758	-0.6
Washington	16,774	16,683	16,680	16,640	16,657	-92	-0.5	-94	-0.6	-134	-0.8	-117	-0.7
Oregon	10,290	10,226	10,233	10,226	10,219	-64	-0.6	-57	-0.6	-64	-0.6	-72	-0.7
California	98,178	97,940	97,857	97,538	97,692	-237	-0.2	-321	-0.3	-640	-0.7	-486	-0.5
Alaska	1,487	1,479	1,474	1,466	1,472	-8	-0.5	-13	-0.9	-20	-1.4	-14	-1.0
Hawaii	3,788	3,740	3,725	3,717	3,719	-48	-1.3	-63	-1.7	-71	-1.9	-69	-1.8

- Rounds to less than 500,000 or to less than ± 0.05 percent.

[1] Based on population adjusted by national underenumeration rates for age, sex, and race groups.

Table 3. AMOUNTS OF GENERAL REVENUE SHARING MONEY BASED ON 1970 CENSUS REPORTED DATA AND 1970 CENSUS DATA CORRECTED BY THE BASIC SYNTHETIC METHOD FOR STATES, DIVISIONS, AND REGIONS

(Numbers in thousands. Coverage rates for population are national rates by age, sex, and race)

Region, division, and State	Census[1]	Corrected population only[2]	Corrected per capita income	Corrected population[2] and per capita income	Difference from census					
					Corrected population only		Corrected per capita income		Corrected population and per capita income	
					Amount	Percent	Amount	Percent	Amount	Percent
United States, total	5,300,000	5,300,000	5,300,000	5,300,000	-	-	-	-	-	-
Northeast	1,362,034	1,360,954	1,354,551	1,353,474	-1,080	-0.1	-7,483	-0.5	-8,560	-0.6
New England	322,209	321,108	320,991	319,896	-1,101	-0.3	-1,218	-0.4	-2,313	-0.7
Maine	32,678	32,458	31,382	31,171	-220	-0.7	-1,296	-4.0	-1,507	-4.6
New Hampshire	16,544	16,437	17,017	16,908	-107	-0.6	+473	+2.9	+384	+2.2
Vermont	14,855	14,759	14,875	14,779	-96	-0.6	+20	+0.1	-76	-0.5
Massachusetts	166,005	165,535	165,447	164,978	-470	-0.3	-558	-0.3	-1,027	-0.6
Rhode Island	24,255	24,168	24,150	24,062	-87	-0.4	-105	-0.4	-193	-0.8
Connecticut	67,872	67,751	68,120	67,996	-121	-0.2	+248	+0.4	+126	+0.2
Middle Atlantic	1,039,825	1,039,846	1,033,560	1,033,578	+21	-	-6,265	-0.6	-6,247	-0.6
New York	593,420	593,603	587,520	587,698	+183	-	-5,900	-1.0	-5,722	-1.0
New Jersey	167,380	167,370	168,398	168,388	-10	-	+1,018	+0.6	+1,008	+0.6
Pennsylvania	279,025	278,873	277,642	277,492	-152	-0.1	-1,383	-0.5	-1,533	-0.5
North Central	1,378,138	1,376,007	1,366,908	1,364,835	-2,131	-0.2	-11,230	-0.8	-13,303	-1.0
East North Central	962,671	962,144	961,000	960,463	-527	-0.1	-1,671	-0.2	-2,208	-0.2
Ohio	214,929	214,879	214,239	214,189	-50	-	-690	-0.3	-740	-0.3
Indiana	114,321	114,035	114,185	113,901	-286	-0.3	-136	-0.1	-420	-0.4
Illinois	275,147	275,483	272,917	273,250	+336	+0.1	-2,230	-0.8	-1,897	-0.7
Michigan	223,954	224,109	223,536	223,690	+155	+0.1	-418	-0.2	-264	-0.1
Wisconsin	134,320	133,638	136,123	135,433	-682	-0.5	+1,803	+1.3	+1,113	+0.8
West North Central	415,467	413,863	405,908	404,372	-1,604	-0.4	-9,559	-2.3	-11,095	-2.7
Minnesota	106,828	106,459	106,579	106,211	-369	-0.3	-249	-0.2	-617	-0.6
Iowa	76,508	76,045	73,413	72,970	-463	-0.6	-3,095	-4.0	-3,538	-4.6
Missouri	98,813	98,750	98,425	98,374	-63	-0.1	-388	-0.4	-439	-0.4
North Dakota	19,891	19,752	19,470	19,334	-139	-0.7	-421	-2.1	-557	-2.8
South Dakota	23,633	23,456	21,878	21,715	-177	-0.7	-1,755	-7.4	-1,918	-8.1
Nebraska	38,389	38,195	35,595	35,415	-194	-0.5	-2,794	-7.3	-2,974	-7.7
Kansas	51,405	51,206	50,548	50,353	-199	-0.4	-857	-1.7	-1,052	-2.0
South	1,605,758	1,612,893	1,619,428	1,626,540	+7,135	+0.4	+13,670	+0.9	+20,782	+1.3
South Atlantic	762,690	766,518	775,934	779,790	+3,828	+0.5	+13,244	+1.7	+17,100	+2.2
Delaware	16,066	16,082	15,824	15,839	+16	+0.1	-242	-1.5	-227	-1.4
Maryland	107,297	107,596	108,068	108,370	+299	+0.3	+771	+0.7	+1,073	+1.0
District of Columbia	23,937	24,465	23,551	24,065	+528	+2.2	-386	-1.6	+128	+0.5
Virginia	106,383	106,701	107,427	107,751	+318	+0.3	+1,044	+1.0	-1,368	-1.3
West Virginia	50,903	50,630	51,167	50,893	-273	-0.5	-264	-0.5	-10	-
North Carolina	135,391	136,444	133,724	134,567	+853	+0.6	-1,867	-1.4	-1,024	-0.8
South Carolina	71,580	72,383	71,801	72,608	+803	+1.1	+221	+0.3	+1,028	+1.4
Georgia	108,049	109,023	109,431	110,418	+974	+0.9	+1,382	+1.3	+2,369	+2.2
Florida	142,884	143,194	154,941	155,279	+310	+0.2	+12,057	+8.4	+12,395	+8.7
East South Central	359,764	361,619	360,972	362,813	+1,855	+0.5	+1,208	+0.3	+3,049	+0.8
Kentucky	85,722	85,492	85,723	85,494	-230	-0.3	-1	-	-228	-0.3
Tennessee	98,049	98,278	99,881	100,115	+229	+0.2	+1,832	+1.9	+2,066	+2.1
Alabama	89,225	89,932	91,806	92,534	+707	+0.8	+2,581	+2.9	+3,309	+3.7
Mississippi	86,768	87,917	83,562	84,670	+1,149	+1.3	-3,206	-3.7	-2,098	-2.4
West South Central	483,304	484,756	482,522	483,937	+1,452	+0.3	-782	-0.2	+633	+0.1
Arkansas	52,670	52,827	50,790	50,942	+157	+0.3	-1,880	-3.6	-1,728	-3.3
Louisiana	122,477	123,769	119,512	120,774	+1,292	+1.1	-2,965	-2.4	-1,703	-1.4
Oklahoma	59,025	58,829	61,226	61,024	-196	-0.3	+2,201	+3.7	+1,999	+3.4
Texas	249,132	249,331	250,994	251,197	+199	+0.1	+1,862	+0.7	-2,065	-0.8
West	954,071	950,143	959,115	955,153	-3,928	-0.4	+5,044	+0.5	+1,082	+0.1
Mountain	227,079	225,791	231,729	230,414	-1,288	-0.6	+4,650	+2.0	+3,335	+1.5
Montana	20,167	20,025	20,030	19,889	-142	-0.7	-137	-0.7	-278	-1.4
Idaho	21,118	20,972	21,467	21,320	-146	-0.7	+349	+1.7	+202	+1.0
Wyoming	9,542	9,478	9,539	9,475	-64	-0.7	-3	-	-67	-0.7
Colorado	54,307	54,126	54,862	54,678	-181	-0.3	+555	+1.0	+371	+0.7
New Mexico	32,817	32,592	32,460	32,238	-225	-0.7	-357	-1.1	-579	-1.8
Arizona	47,707	47,410	49,868	49,558	-297	-0.6	+2,161	+4.5	+1,851	+3.9
Utah	29,907	29,698	32,024	31,801	-209	-0.7	+2,117	+7.1	+1,894	+6.3
Nevada	11,514	11,490	11,479	11,455	-24	-0.2	-35	-0.3	-59	-0.5
Pacific	726,992	724,352	727,386	724,739	-2,640	-0.4	+394	+0.1	-2,253	-0.3
Washington	80,785	80,333	81,607	81,151	-452	-0.6	+822	+1.0	+366	+0.5
Oregon	53,061	52,859	53,310	53,304	-202	-0.4	+449	+0.8	+243	+0.5
California	563,150	561,638	562,432	560,920	-1,512	-0.3	-718	-0.1	-2,230	-0.4
Alaska	6,227	6,211	6,195	6,178	-16	-0.3	-32	-0.5	-49	-0.8
Hawaii	23,769	23,311	23,642	23,186	-458	-1.9	-127	-0.5	-583	-2.5

- Zero or rounds to less than ± 0.05 percent.

[1]Distribution differs from official entitlements published by the Office of Revenue Sharing partly because the official entitlements exclude money held in reserve.

[2]Pertains to the general population factor and the urbanized population factor.

Table 4. AMOUNTS OF GENERAL REVENUE SHARING MONEY BASED ON 1970 CENSUS REPORTED DATA AND 1970 CENSUS DATA CORRECTED BY A MODIFIED SYNTHETIC METHOD FOR STATES, DIVISIONS AND REGIONS

(Numbers is thousands. Synthetic method modified on the basis of median family income)

Region, division, and State	Census[1]	Corrected population only[2]	Corrected per capita income	Corrected population[2] and per capita income	Difference from census: Corrected population only		Corrected per capita income		Corrected population and per capita income	
					Amount	Percent	Amount	Percent	Amount	Percent
United States, total	5,300,000	5,300,000	5,300,000	5,300,000	-	-	-	-	-	-
Northeast	1,362,034	1,356,962	1,351,285	1,346,219	-5,072	-0.4	-10,749	-0.8	-15,815	-1.2
New England	322,209	320,357	320,302	318,443	-1,852	-0.6	-1,907	-0.6	-3,766	-1.2
Maine	32,678	32,504	31,406	31,236	-174	-0.5	-1,272	-3.9	-1,442	-4.4
New Hampshire	16,544	16,399	16,967	16,816	-145	-0.9	+423	+2.6	+272	+1.6
Vermont	14,855	14,749	14,856	14,749	-106	-0.7	+1	-	-106	-0.7
Massachusetts	166,005	165,117	165,054	164,167	-888	-0.5	-951	-0.6	-1,838	-1.1
Rhode Island	24,255	24,133	24,100	23,977	-122	-0.5	-155	-0.6	-278	-1.1
Connecticut	67,872	67,455	67,919	67,498	-417	-0.6	+47	+0.1	-374	-0.6
Middle Atlantic	1,039,825	1,036,605	1,030,983	1,027,776	-3,220	-0.3	-8,842	-0.9	-12,049	-1.2
New York	593,420	591,797	586,076	584,476	-1,623	-0.3	-7,344	-1.2	-8,944	-1.5
New Jersey	167,380	166,557	167,889	167,056	-823	-0.5	+509	+0.3	-324	-0.2
Pennsylvania	279,025	278,251	277,018	276,244	-774	-0.3	-2,007	-0.7	-2,781	-1.0
North Central	1,278,138	1,371,546	1,363,141	1,356,614	-6,592	-0.5	-14,997	-1.1	-21,524	-1.6
East North Central	962,671	958,024	957,793	953,128	-4,647	-0.5	-4,878	-0.5	-9,543	-1.0
Ohio	214,929	214,021	213,626	212,717	-908	-0.4	-1,303	-0.6	-2,212	-1.0
Indiana	114,321	113,539	113,618	112,832	-782	-0.7	-703	-0.6	-1,489	-1.3
Illinois	275,147	274,275	272,119	271,256	-872	-0.3	-3,028	-1.1	-3,891	-1.4
Michigan	223,954	223,010	222,859	221,914	-944	-0.4	-1,095	-0.5	-2,040	-0.9
Wisconsin	134,320	133,179	135,571	134,409	-1,141	-0.8	+1,251	+0.9	+89	+0.1
West North Central	415,467	413,522	405,348	403,486	-1,945	-0.5	-10,119	-2.4	-11,981	-2.9
Minnesota	106,828	106,260	106,350	105,782	-568	-0.5	-478	-0.4	-1,046	-1.0
Iowa	76,508	75,978	73,302	72,788	-530	-0.7	-3,206	-4.2	-3,720	-4.9
Missouri	98,813	98,585	98,199	98,019	-228	-0.2	-614	-0.6	-794	-0.8
North Dakota	19,891	19,796	19,502	19,408	-95	-0.5	-389	-2.0	-483	-2.4
South Dakota	23,633	23,523	21,927	21,823	-110	-0.5	-1,706	-7.2	-1,810	-7.7
Nebraska	38,389	38,193	35,571	35,387	-196	-0.5	-2,818	-7.3	-3,002	-7.8
Kansas	51,405	51,187	50,497	50,279	-218	-0.4	-908	-1.8	-1,126	-2.2
South	1,605,758	1,622,996	1,628,795	1,646,028	+17,238	+1.1	+23,037	+1.4	+40,270	+2.5
South Atlantic	762,690	768,225	777,646	783,216	+5,535	+0.7	+14,956	+2.0	+20,526	+2.7
Delaware	16,066	16,037	15,786	15,758	-29	-0.2	-280	-1.7	-308	-1.9
Maryland	107,297	107,060	107,731	107,487	-237	-0.2	+434	+0.4	+190	+0.2
District of Columbia	23,937	24,155	23,443	23,654	+218	+0.9	-494	-2.1	-283	-1.2
Virginia	106,383	106,585	107,219	107,420	+202	+0.2	+836	+0.8	+1,037	+1.0
West Virginia	50,903	50,898	51,405	51,396	-5	-	+502	+1.0	+493	+1.0
North Carolina	135,591	137,193	134,374	135,950	+1,602	+1.2	-1,217	-0.9	-359	+0.3
South Carolina	71,580	73,097	72,463	73,992	+1,517	+2.1	+883	+1.2	+2,412	+3.4
Georgia	108,049	109,582	109,924	111,474	+1,533	+1.4	+1,875	+1.7	+3,425	+3.2
Florida	142,884	143,618	155,301	156,085	+734	+0.5	+12,417	+8.7	+13,201	+9.2
East South Central	359,764	366,838	365,844	372,971	+7,074	+2.0	+6,080	+1.7	+13,207	+3.7
Kentucky	85,722	85,870	86,047	86,189	+148	+0.2	+325	+0.4	+467	+0.5
Tennessee	98,049	98,853	100,401	101,216	+804	+0.8	+2,352	+2.4	+3,167	+3.2
Alabama	89,225	91,166	93,007	95,022	+1,941	+2.2	+3,782	+4.2	+5,797	+6.5
Mississippi	86,768	90,949	86,389	90,544	+4,181	+4.8	-379	-0.4	+3,776	+4.4
West South Central	483,304	487,933	485,305	489,841	+4,629	+1.0	+2,001	+0.4	+6,537	+1.4
Arkansas	52,670	53,830	51,721	52,855	+1,160	+2.2	-949	-1.8	+185	+0.4
Louisiana	122,477	125,507	121,114	124,100	+3,030	+2.5	-1,363	-1.1	+1,623	+1.3
Oklahoma	59,025	59,041	61,408	61,419	+16	-	+2,383	+4.0	+2,394	+4.1
Texas	249,132	249,555	251,062	251,467	+423	+0.2	+1,930	+0.8	+2,335	+0.9
West	954,071	948,497	956,783	951,139	-5,574	-0.6	+2,712	+0.3	-2,932	-0.3
Mountain	227,079	225,620	231,428	229,917	-1,459	-0.6	+4,349	+1.9	+2,838	+1.2
Montana	20,167	20,025	20,018	19,875	-142	-0.7	-149	-0.7	-292	-1.4
Idaho	21,118	20,992	21,474	21,344	-126	-0.6	+356	+1.7	+226	+1.1
Wyoming	9,542	9,472	9,526	9,455	-70	-0.7	-16	-0.2	-87	-0.9
Colorado	54,307	54,029	54,741	54,457	-278	-0.5	+434	+0.8	+150	+0.3
New Mexico	32,817	32,639	32,486	32,308	-178	-0.5	-331	-1.0	-509	-1.6
Arizona	47,707	47,344	49,768	49,385	-363	-0.8	+2,061	+4.3	+1,678	+3.5
Utah	29,907	29,663	31,966	31,703	-244	-0.8	+2,059	+6.9	+1,796	+6.0
Nevada	11,514	11,456	11,449	11,390	-58	-0.5	-65	-0.6	-124	-1.1
Pacific	726,992	722,877	725,355	721,222	-4,115	-0.6	-1,637	-0.2	-5,770	-0.8
Washington	80,785	79,987	81,205	80,396	-798	-1.0	+420	+0.5	-389	-0.5
Oregon	53,061	52,804	53,405	53,142	-257	-0.5	+344	+0.6	+81	+0.2
California	563,150	560,385	560,998	558,229	-2,765	-0.5	-2,152	-0.4	-4,921	-0.9
Alaska	6,227	6,178	6,172	6,123	-49	-0.8	-55	-0.9	-104	-1.7
Hawaii	23,769	23,523	23,375	23,332	-246	-1.0	-194	-0.8	-437	-1.8

- Zero or rounds to less than ± 0.05 percent.

[1]Distribution differs from official entitlements published by the Office of Revenue Sharing partly because the official entitlements exclude money held in reserve.

[2]Pertains to the general population factor and the urbanized population factor.

WORLD DEMOGRAPHIC MAPS

These three maps provide specific data on the fertility, population growth, and mortality patterns of the world. They were developed by the International Statistical Programs Center of the Census Bureau for the Office of Population, Agency for International Development. Each map measures 10½ x 16 inches and is printed in color.

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IN RELATION TO EQUAL EMPLOYMENT OPPORTUNITY
IN CITY GOVERNMENT EMPLOYMENT

WHEREAS, Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, City, State and other federal laws prohibit discrimination in employment by public employers; and

WHEREAS, it is necessary that the City be eligible and qualified to receive funds from federal and state agencies; and

WHEREAS, federal and state laws and regulations, as they relate to such grants, require the City or the recipient City agency to formulate, implement and maintain an equal employment opportunity program; and

WHEREAS, it is the purpose of such laws and regulations, and it has long been the policy of the City, to provide equal employment opportunity in all positions of City employment; and

WHEREAS, such purpose and policy is consistent with a merit system of appointment and promotion in public employment; and

WHEREAS, certain actions have already been undertaken by the City to ensure non-discrimination and equal employment opportunities by removing impediments to the employment and advancement of qualified minorities, women and the physically handicapped; and

WHEREAS, it is necessary and in the City's interest that all activities relating to equal employment opportunity in City employment, required by law, regulation or City policy, be under-

taken as a coordinated effort under the direction of the Office of the Mayor.

NOW, THEREFORE, by the power vested in me as Mayor of the City of New York, it is hereby ordered as follows:

Section 1. There shall be prepared, under the direction of the Office of the Mayor, by the Department of Personnel, the City Commission on Human Rights and the Law Department for the approval of the Mayor, guidelines setting forth standards and procedures for a City Equal Employment Opportunity Program. The Program guidelines shall comply with applicable federal, state and local laws, regulations and guidelines relating to discrimination in employment.

(a) The City Equal Employment Opportunity Program shall be designed to remove impediments to the employment of and increase employment opportunities and advancement in employment of qualified minorities, women, and the physically handicapped.

(b) Equal employment opportunity under this Order shall include but shall not be limited to the following: recruitment, hiring, selection, benefits, promotion, transfer, separation, compensation, and skills training.

§ 2. Immediately after the issuance of the approved guidelines prepared under section one of this Order, each City agency shall review and analyze (a) the composition of its work force as required by equal employment opportunity laws and regulations and (b) its personnel policies, practices and procedures. The review and analysis made under (a) and (b) shall be based upon the standards and procedures contained in the approved City Equal Employment Opportunity Program guidelines.

§ 3. Each agency shall then prepare for the approval of the Mayor, an Agency Equal Employment Opportunity Program in accordance with the standards and procedures contained in the approved City Equal Opportunity Program guidelines. Each agency shall submit its Program, including its review, analysis and recommendations prepared under section one of this Order, to the Department of Personnel and City Commission on Human Rights for review and report to the Mayor.

(a) Each City agency shall designate a senior staff member as an Equal Employment Opportunity Officer, to be accountable to the head of the agency. It shall be the duty of such officer to ensure compliance by the agency with the applicable provisions of this Order and the Equal Employment Opportunity Program of the agency. The Equal Employment Opportunity Officer shall have such other duties and responsibilities as may be specified in the City and Agency Equal Employment Opportunity Programs.

(b) City agencies shall report to the Mayor on a regularly scheduled basis as will be provided in the guidelines issued under section one of this Order with respect to the implementation and progress of the agency programs. Agencies shall submit such reports to the Department of Personnel and the City Commission on Human Rights for their review and report to the Mayor.

§ 4. Immediately after the issuance of the approved City Equal Employment Opportunity Program guidelines, the Department of Personnel, in consultation with the City Commission on Human Rights and the Law Department, shall review and analyze existing city-wide personnel policies, practices and procedures in accordance with the guidelines. It shall prepare and submit for the approval of the

Mayor a city-wide Equal Employment Opportunity Program, including its review and analysis together with its recommendations. Such Program shall be submitted to the Mayor together with the comments of the City Commission on Human Rights and the Law Department.

§ 5. The City Equal Employment Opportunity Program shall be effective upon approval by the Mayor. It shall be administered and enforced under the direction of the Mayor or his designee in accordance with the procedures prescribed by that Program.

§ 6. This Order shall take effect immediately.

/L.S./ ABRAHAM D. BEAME
ABRAHAM D. BEAME
MAYOR

Guidelines for New York City Equal Employment Opportunity Program

ABRAHAM D. BEAME

MAYOR

PLAINTIFF'S APPENDIX-GUIDELINES FOR N.Y.C.
EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

THESE GUIDELINES, ISSUED PURSUANT TO EXECUTIVE ORDER NO. 14, DATED MAY 21, 1974, HAVE BEEN PREPARED BY:

THE DEPARTMENT OF PERSONNEL

THE COMMISSION ON HUMAN RIGHTS

THE LAW DEPARTMENT

PLAINTIFF'S APPENDIX-GUIDELINES FOR N.Y.C.
EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

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PLAINTIFF'S APPENDIX-GUIDELINES FOR N.Y.C. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

I. INTRODUCTION

Under the provisions of Executive Order No. 14, dated May 21, 1974, the Mayor ordered the implementation of a City Equal Employment Opportunity Program. These guidelines set forth the standards and procedures to be used in preparing such Program.

The City of New York with its large, diverse population has been a place of opportunity for all groups seeking to improve the quality of their lives, and each new group has carved a place in the mosaic that is this City. City government has assisted in this process by its leadership in providing employment to new groups entering the City's workforce who were often denied employment elsewhere. Employment in New York City government has been based on merit and fitness as required by both State and City law. As one of the largest public employers in the country, the City has been actively engaged in providing an equal employment opportunity system for its large and diverse population. The issuance of these guidelines formalizes its existing equal employment opportunity program and will assure that all units of the City's personnel system are uniform in their fundamental approach to maintaining equal employment opportunity concepts and procedures.

II. EQUAL EMPLOYMENT OPPORTUNITY LAWS AND REGULATIONS

The civil service reforms of the late eighteen hundreds mandated the principal of selection based upon merit and fitness to perform the job. The civil rights reforms of this century require no less, and by eliminating discrimination, seek the same objectives. Any form of employment which unlawfully discriminates excludes some of those

otherwise eligible for employment and cannot therefore be described as truly competitive. Equal employment opportunity must therefore be an integral part of the merit system.

Within the past two decades, the courts and legislatures have come to adopt the view that prohibitions against overt employment discrimination alone are insufficient. The law has shifted its focus to the discriminatory consequences of employment practices. It is now necessary to reexamine personnel administration from within to determine if practices and procedures, neutral or non-discriminatory on their face, have the effect of arbitrarily excluding significant portions of the population from the full range of employment. This concept is fundamental to laws against discrimination.

The City as a public employer operates not only under civil service law, but is subject to a wide variety of federal, state and local laws against discrimination. Over the past ten years, the federal government has acted to ensure equal employment opportunity on a nationwide basis, through legislation which either mandates non-discrimination in employment or requires such action as a condition of federal funding. State and City laws also contain similar provisions relating to equal employment opportunity.

Such laws or the orders and regulations issued under them require that positive or affirmative steps be undertaken to eliminate those practices which adversely affect the employment opportunities of those covered by law. To ensure such action, written programs are

required. The City is now formalizing its existing program to ensure that it is comprehensive and coordinated on a city-wide basis. Such program is undertaken within the framework of and is consistent with civil service law.

These program guidelines draw upon the detailed standards for implementing the necessary positive steps contained in the regulations and guidelines of various agencies which enforce federal or other laws, or grant federal funds. A basic requirement is the reporting of personnel data in the form of work force composition analysis which is used partly as a measurement of the need for and results of any affirmative program. At the present time, the U. S. Equal Employment Opportunity Commission, which enforces Title VII of the Civil Rights Act of 1964, requires annual reporting of work force composition by sex and identification of the following groups: White, Black, Spanish-surnamed, Asian-American, American Indian and Other. This standard, followed by virtually all agencies which administer laws against discrimination, will be followed in the City Equal Employment Opportunity Program.

The basic laws applicable are set forth below. They either prohibit discrimination and provide that an administrative agency or the courts can require affirmative action as a remedy, or condition federal funding upon non-discrimination and affirmative steps. When discrimination is found, Court or agency-ordered remedies have included specific hiring orders, monetary settlements including back

pay and damages, dismantling of long established practices and various other and differing remedies. Non-compliance in the case of federally funded contracts or grants can lead to loss of funding or delays in granting approval of funds.

City law forbidding employment discrimination is contained in Administrative Code, Chapter I, Title B, enforced by the City Commission on Human Rights. The Commission is empowered to receive and investigate complaints of discrimination and to require affirmative action as a remedy. The State's Human Rights Law, found in Executive Law, Article 15, also prohibits discrimination. The law is enforced by the State Division of Human Rights, which is empowered to receive and investigate individual complaints and to require affirmative action as a remedy.

The basic federal law in this area is contained in the Civil Rights Act of 1964. Title VII of that Act became applicable to public employers in 1972. It prohibits discrimination in all aspects of employment. The law is administered and enforced by various federal agencies, including the Equal Employment Opportunity Commission which has required affirmative action as a remedy. Title VII also provides that aggrieved parties may also bring suit and that courts may order affirmative action including remedies to overcome the effect of past practices.

In May of 1974, by reason of amendments to the Fair Labor Standards Act, the provisions of the Equal Pay Act of 1963 now apply to the

City as a public employer. The Equal Pay Act prohibits discrimination in payment of wages because of sex. The Age Discrimination in Employment Act of 1967, which prohibits discrimination because of age in all aspects of employment, also became applicable to the City in May of 1974. These statutes are enforced by the U. S. Department of Labor.

In addition, various federal laws, executive orders and regulations condition federal funding upon observance of non-discrimination requirements and affirmative steps to eliminate any adverse impact resulting from employment policies or practices. Among these are Title VI of the Civil Rights Act of 1964, which prohibits discrimination in program administration under any program receiving federal financial assistance by way of grant, loan or contract. Where a primary objective of the federal financial assistance is to provide employment, all of the employment practices of the employer are covered by the prohibition. Various federally funded public employment programs require non-discrimination and affirmative steps to ensure non-discrimination and upward mobility for participants.

Under amendments made in 1973 to federal law concerning vocational rehabilitation, the Rehabilitation Act of 1973, the U. S. Rehabilitation Services Administrator is to expand employment opportunities in the public and private sectors for handicapped individuals. Affirmative action is required on the part of federal contractors.

Presidential Executive Orders have been issued to carry out the national policy of equal employment opportunity. Executive Order No. 11246, as amended by Executive Order No. 11375, prohibits discrimination and requires affirmative action on the part of contractors (construction or non-construction) who enter into contracts with the U. S. government.

In addition, the United States Supreme Court set a standard for non-discrimination in employment in its interpretation of Title VII in Griggs v. Duke Power Co.:

> "What is required ***
> is the removal of artificial, arbitrary
> and unnecessary barriers to employment
> when the barriers operate invidiously to
> discriminate on the basis of *** impermis-
> sible classification *** the Act proscribes
> not only overt discrimination but also
> practices that are fair in form, but dis-
> criminatory in operation."

III. STANDARDS FOR THE CITY EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

The standards set forth hereafter are intended for the general guidance of City agencies in preparing their Equal Employment Opportunity (EEO) programs. They reflect the City's continuing and unequivocal commitment to a policy of non-discrimanatory merit employment within a civil service system.

These standards apply both to the Department of Personnel in the performance of its overall functions and duties and to individual agencies. The standards cover all positions regardless of jurisdictional classification, except for those in the unclassified

service and some other limited positions as may be designated by the Department of Personnel, based upon federal standards.

As previously noted, overt discrimination is prohibited. In addition, intent to discriminate need no longer be shown. Employment practices, neutral on their face, and equally applied to all without intent to discriminate, can be discriminatory if their impact is to exclude people of one group more than those of another. If an employment practice excludes a significantly higher proportion of qualified persons from one group, it has a "disparate impact" and, unless job related, it is prohibited. Both under civil service and equal employment opportunity the standard of measurement must be ability to perform the job.

The courts have applied "disparate impact" principle to practically all employment practices of private and public employers. Employers must now examine the statistical make-up of their workforce and analyze employment practices to determine if there are any employment practices which have a disparate impact on minorities or women.

Employers are held to strict standards of compliance with the prohibitions against discrimination. The only justifications for an otherwise discriminatory practice are 1/ business necessity or 2/ bona fide occupational qualification. These are interpreted very narrowly. Agencies shall refer questions concerning business necessity and bona fide occupational requirements to the Department of Personnel.

It should be noted that absence of bad faith or intent, administrative convenience or the existence of a collective bargaining or other agreement will not excuse an otherwise discriminatory act or practice.

1. Recruitment

A policy of fair non-discriminatory recruitment requires the maintenance of recruitment procedures which provide for outreach efforts directed to those sources which are likely to attract minorities and women. This is an obligation which extends both to agencies and the Department of Personnel in their respective recruitment efforts. An example of a discriminatory recruitment procedure which could adversely affect minorities or women would be the exclusive publication of job openings through word-of-mouth by existing employees when there is underutilization of women and minorities in the existing workforce.

2. Selection Criteria

A selection standard or test which has a disparate effect on minorities or women is discriminatory unless the employer can clearly demonstrate that the selection standard is job related. In the context of anti-discrimination law, the term "test" is defined as any performance measure used as a basis for any employment decision and includes written examinations as well as education, work and personal history. Courts have found certain competitive and qualifying tests discriminatory even

though administered under a civil service system because they had an adverse impact on certain groups and were not job related. This standard is also applicable to agencies which select or promote employees into jobs for which no competitive examinations are given.

All written and oral examinations, education and experience requirements not related to the ability to perform the job and which have the effect of excluding minorities and women, are discriminatory. Questionnaires, applications, investigations, and interviews must be reviewed from a job related perspective and must be designed to avoid obtaining non-job related information which could adversely affect the selection of minorities and women. When an agency has discretion in the selection process, it is obligated to apply the principle of job related selection standards and should accomplish this by reviewing the established standards and qualifications and by making or recommending such changes as are necessary to prevent discriminatory selection.

3. Placement, Job Classification and Assignment

The clustering or concentration by minority group status or sex in job classification, job assignment, job location, or shift assignments may result in separate treatment of minorities and women in terms of working conditions. Such clustering may also adversely affect opportunities for training and advancement. Under the law, it is immaterial what caused such clustering in

the past. When an analysis demonstrates a pattern of clustering or concentration of minorities or women such conditions may be found discriminatory and where necessary should be eliminated or alleviated by reclassification, reassignment, or other appropriate corrective action.

4. Promotion

Standards applicable to selection apply also in the case of promotion whether through competitive examination or otherwise. Thus, selection standards for promotion must be based upon standards which objectively and fairly assess the employee's ability to perform the job and must not be arbitrary. Criteria for selecting candidates should be based upon tests, experience and qualifications which have been established on the basis of job-relatedness. Criteria which freeze employees into certain lines or job series, or place a value on seniority which is not job related, can have an adverse impact on minorities and women and should be revised where necessary to eliminate any adverse effect.

5. Training

Formal and informal training programs offered by the City to its employees are an important means for improving skills and providing upward mobility. When an analysis of participation in training programs reveals only sparse inclusion of minorities and women, it is required that a review of selection and recruitment procedures and standards be conducted so as to determine

whether the standards of fair recruitment and job related selection standards are being applied to training programs.

6. Separations

Separation policies and practices which have an adverse impact on minorities or women are discriminatory unless they are job related and dictated by business necessity or operation of law. Separations must be analyzed from the perspective of whether they tend to perpetuate the effect of past discrimination, and alternatives should be developed so as to avoid such impact.

7. Salary Administration

Policies or practices affecting wages which result in unequal treatment of minorities or women or have an adverse effect on minorities or women and are not job related, are discriminatory. Policies affecting the basis for awarding merit increases, or hiring at salary levels above the minimum, and other practices such as assigning overtime or night shift duty must be reviewed to determine whether they afford equal treatment and are not based on selection policies which are non-job related.

8. Terms and Conditions of Work

Working conditions and benefits should be afforded on a basis which does not discriminate against minorities or women by failing to provide equal treatment.

IV. PROCEDURES FOR PROGRAM PREPARATION

As set forth in Executive Order No. 14, the City Equal Employment Opportunity Program is to be prepared upon the issuance of these guidelines.

The following procedures shall be used:

1. Department of Personnel Program

   a. Upon the issuance of these guidelines, the Department of Personnel, in consultation with the City Commission on Human Rights and the Law Department shall prepare its program as required by Executive Order No. 14.

   b. The review and analysis required as set forth in section V of these guidelines shall take place immediately.

   c. Upon completion of the review and analysis the Department shall prepare an Equal Employment Opportunity Program applicable to citywide policies, practices and procedures.

   d. The Department of Personnel Program, together with the recommendations of the Law Department and the City Commission on Human Rights shall be submitted to the Mayor.

2. Agency Program

   a. Upon the issuance of these guidelines, each agency shall prepare an Agency Equal Employment Opportunity Program as required by Executive Order No. 14.

b. The agency shall coordinate such program preparation with the Department of Personnel and City Commission on Human Rights. Each agency shall report the title, name and telephone number of its Equal Employment Opportunity (EEO) officer to the Department of Personnel and City Commission on Human Rights. The Department of Personnel shall provide assistance and consultation as necessary. It will release annually to each agency the EEO statistics (EEO-4 report) and other additional information, subject to prescribed conditions for their use. The City Commission on Human Rights shall provide technical assistance to agencies and will be available for appropriate consultation.

c. The review and analysis required, as set forth in section VI of these guidelines shall take place immediately. Upon completion of the review and analysis, there shall be prepared an Agency Equal Employment Opportunity Program in accordance with the attached timetable.

d. Such review and Analysis and the agency program shall be submitted to the Department of Personnel and City Commission on Human Rights for review and report to the Mayor.

3. City Program

The Department of Personnel and agency programs which together shall constitute the City Equal Employment Opportunity Program shall take effect within each agency upon approval by the Mayor.

V. CONTENT OF THE PROGRAM - DEPARTMENT OF PERSONNEL

The Department of Personnel shall prepare an Equal Employment Opportunity Program organized into two parts. The first part shall describe the program as it will function during the year; the second, the action already undertaken toward insuring full equality of opportunity in city employment.

PART I

Part I of the Department of Personnel program will contain minimum components as outlined below.

1. Administrative Procedures

The Department of Personnel shall describe the administrative procedures to be established to implement its Equal Employment Opportunity program. These procedures shall include the lines of responsibility, the means of communication of the program to affected agencies and the requirements for internal reporting and reviewing to insure that objectives are met.

2. Centralized Data Gathering

The Program shall provide a detailed description of the kind of data gathered on a City-wide basis in order to analyze the composition of the City's workforce. This shall include data gathered for the Equal Employment Opportunity Statistics (EEO-4) forms and such other statistics as may be necessary to determine the effect of employment practices on women and minorities and to comply with other Federal reporting requirements.

Such description will also include the methodology and procedures for gathering the data. Additionally, the Department of Personnel shall include a description of its procedures for disseminating the data to individual agencies.

3. Statistical Surveys of Employment Practices

The Department of Personnel will prepare a plan to phase in procedures which shall include:

a. Surveys of centrally conducted recruitment efforts by job title, to determine sex and minority group status of applicants.

b. Surveys by sex and minority group status in connection with each civil service examination to determine the composition of the group taking the test, their respective pass/fail rates and ranking positions. Such surveys shall be conducted for each examination whether written, training and experience, physical or any combination of the above.

c. Surveys by minority group status and sex of those who fail to pass the investigative check and the pre-appointment medical.

d. Statistical analysis of those participating in training programs conducted by the Department of Personnel and provisions for sharing such analyses with individual agencies.

NOTE: The program will not include statistical reports of hires, promotions, transfers and disciplinary actions, as these will be kept by individual agencies.

4. Analysis of Practices

In addition to statistical analyses, the Department of Personnel will conduct a review of its practices to ensure compliance with Section III Standards, including the following:

a. Recruitment procedures shall be reviewed to insure that all segments of the population are notified of job opportunities and that minorities and women are encouraged to apply.

b. Job Classifications shall be reviewed, including review on a title-by-title basis as examinations are scheduled, to assure that all eligibility requirements for the position are job related, based upon a review of job duties.

c. The examining process, including investigation and medical procedures, shall be reviewed on a title-by-title basis from the time examinations are ordered and scheduled to the time of appointment to assure that criteria, standards and procedures are valid and job related.

d. All examinations shall be validated.

e. Occupational groups shall be reviewed to determine whether their structure has a non-job related adverse impact on minorities and women.

f. Time and Leave Regulations and City-wide benefits program policies shall be reviewed to determine if regulations and policies have an adverse effect on minorities and women.

g. The Department of Personnel shall review City funded or administered training programs to insure the maximum affirmative impact on the development of minority and women employees.

5. Identification of Problem Areas

The Department of Personnel will analyze the data it gathers and data gathered by the agencies to identify any practices which might impede the employment or advancement of minorities and women.

6. Remedies

The program shall contain remedies for any city-wide practice which may impede opportunities of qualified minorities and women. The program shall also propose remedies for problem areas identified in agency plans as they relate to previous or current practices, procedures and regulations of the Department of Personnel.

Part II.

This part shall describe what actions have been undertaken by the Department of Personnel to afford equal employment opportunity during the previous year. Descriptions of activities shall be supported by statistical data where available.

VI. CONTENT OF THE PROGRAM - INDIVIDUAL AGENCIES

Each agency shall prepare a written equal employment opportunity program organized into two parts. Part I shall consist of statements of equal employment policy, a detailed analysis of the composition of the Agency workforce and personnel practices, and a projection of action to be taken to correct problem areas identified. Part II shall contain a description of what actions have already been undertaken by the Agency to afford equal employment opportunity.

PLAINTIFF'S APPENDIX-GUIDELINES FOR N.Y.C.
EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

PART I.

Part I of the agency program will contain minimum components as outlined below.

1. Equal Employment Opportunity Statement

A firm statement of commitment to equal employment opportunity should be signed by the head of the agency. The equal employment opportunity statement will be circulated so that all personnel will be made aware of the agency's commitment. The EEO statement shall be consistent with the principles, standards and legal references contained in Sections I, II, and III of these guidelines and clearly assert the agency's intention and commitment to an equal employment opportunity program.

2. Statement of Agency Function

This section shall describe what the agency's functions and responsibilities are, what its client or service population is and how it is organized to carry out its function. Information as to size, divisions, branch offices, departments and the position titles utilized by the agency will be presented here.

3. Analysis of Composition of Workforce

The agency, using the annual Equal Employment Opportunity Statistics compiled by the Department of Personnel, will prepare distribution and participation charts which show minorities and women compared with the balance of the workforce, by job category and salary level. The EEO statistics are organized into eight broad job level categories (officials and administrators, professionals, technicians, protective services, paraprofessionals, office and clerical, skilled craft, and service and maintenance). Each of these categories is

further subdivided into eight salary levels.[1] Further analysis of workforce composition by division, department, field office, job title and jurisdictional classification within the EEO job categories shall be made in accordance with the timetable in Section IV of these guidelines.

4. Recruitment, Selection, Hiring, Promotion, Assignment, Disciplinary Actions, and Separations Analyses

The Agency shall compile data in each of these areas by job title, and shall prepare a periodic statistical report in each area comparing minority group persons and women with the balance of the workforce or applicant pool. All data should be compiled by the lowest common unit possible. This primary data can then be summarized in larger units such as departments. This section shall include the following:

a. A report on hiring shall be prepared showing the numbers of employees selected by job title, jurisdictional classification, EEO job category, department, branch, and salary, by minority category and sex. Where applicable, positions filled by competitive title shall indicate the type of examination used and the date of the established list.

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1. A technical assistance paper, Analysis of Equal Employment Opportunity Statistics, is available from the New York City Commission on Human Rights, Employment Rights Division.

b. Data on all promotions shall include the minority category and sex of each promotion, previous position, salary, and classification; the new position, salary, classification, and the basis for the promotion, e.g., by exam, supervisor's recommendation. A record of transfers, assignments, and merit increases awarded should also be compiled and summarized.

c. A record of all disciplinary actions shall show the job title, department, branch, minority category, sex, date and charge, date and disposition.

d. All voluntary and involuntary separations must be surveyed and reported by minority category, sex, job title, classification, department and/or branch, salary level, reason for leaving, and if the separation was voluntary, whether an exit interview was conducted.

5. Identification of Problem Areas

The agency, based on the reports prepared for subpart 3, shall identify job titles, departments, branches and organizational units which show a concentration or underutilization of minorities and women, supported by relevant labor market data. Additionally, all practices reviewed in subpart 4 which demonstrated an adverse impact pattern on qualified minorities and women, shall be identified.

6. Analyses of Practices

This subpart shall consist of relating the information described in subpart 4 and 5 to agency employment practices, policies and procedures, with respect to the Standards set forth in Section III of these guidelines. Where

position titles, salary levels, branches, or departments indicate underutilization or concentration, or practices indicate a disparate effect on qualified minorities or women, the agency shall assess and identify the employment areas relevant to those resulting profiles. For example, the underutilization of minorities or women in a specific position title would be related to those aspects of selection criteria, recruitment, the hiring process, assignment, and perhaps terms and conditions of work (e.g., unusual work hours), which appear to adversely affect the employment of qualified minorities and/or women in that specific position title. An appraisal of a statistic indicating minorities or women are disproportionately represented in an area such as separations or disciplinary actions, should indicate that a review of procedures was conducted along with the evaluation of the selection criteria, hiring and other standards affecting employment actions.

The agency shall consider each of the following employment areas in terms of practices, policies and procedures: Selection Criteria (including those used in promotion and training), Recruitment, Hiring, Assignment and Position Evaluation, Training, Promotion, Salary Administration, Terms and Conditions of Work, Grievance and Discipline, and Separations.

7. Remedies

This subpart shall describe what specific steps the agency will take toward eliminating practices identified in subpart 6, as creating impediments to the employment or advancement of qualified minorities and women, The report shall include: identification of the problem, intended action, projected timing, and intended result.

8. Administrative Procedures

The agency shall describe the administrative procedures established to implement its equal employment opportunity program. The following shall be included:

a. A description of the lines of responsibility and persons delegated to perform EEO functions, beginning with the EEO Officer directly responsible to the head of the agency.

b. A description of the areas of responsibility of personnel delegated to perform EEO functions.

c. A proposal for establishing an informal procedure for discussing and resolving employee complaints related to discrimination which shall include a description of how complaints may be received, investigated and resolved. The use of such procedure by employees will be voluntary and will not exclude or preclude employees from resorting to other forums and procedures provided by law or collective bargaining agreements.

d. Means and timing of internal communication of the program to employees and supervisors.

e. System and requirement for internal reporting, which shall include a report by the EEO officer to the head of the agency on program operations and complaints of discrimination.

9. Other Requirements

Those agencies subject to Law Enforcement Assistance Administration guidelines shall prepare their programs in accordance with any additional requirements of those guidelines where they vary from those set forth in this Section.

PART II

This part shall describe what actions have been undertaken by the agency to afford equal employment opportunity during the previous year. It shall deal with all actions or practices implemented by the agency which are supportive of equal employment opportunity, and should not be limited to only those actions which were remedial. Descriptions of activity shall be supported by statistical data when available, including comparison with the previous year's statistics.

VII. ADMINISTRATION OF THE PROGRAM

1. Department of Personnel Program

The Department of Personnel will submit annually to the Mayor, with copies to the Department of Law and the City Commission on Human Rights, a report on equal employment opportunity problems which are matters of Citywide concern and such other reports within the year as are deemed necessary.

The Department of Personnel annual report will include:

a. An updated compilation and statistical analysis of data required by these guidelines, and a comparison with the prior analysis made by the Department of Personnel.

b. A description of the actions taken by the City during the period to resolve previously identified Citywide problems of equal employment opportunity and the results of such actions.

c. A description of the problem areas which require attention and the actions which will be taken to resolve such problems.

2. Agency Programs

The agency's Equal Employment Opportunity Officer shall furnish a quarterly report to the head of the agency on the progress and status of the agency program. Such quarterly reports shall be kept on file and shall be forwarded on request to the Department of Personnel and City Commission on Human Rights for review. The initial progress report will be prepared three months after approval by the Mayor of the agency program. An annual agency report will be submitted to the Mayor and copies forwarded to the Department of Personnel and the City Commission on Human Rights for review and report to the Mayor.

The agency progress report will include:

a. A comparison with the prior analysis made by the agency based upon an updated compilation and

statistical analysis of the data required by these guidelines.

b. A description of the actions taken by the agency during the period to resolve the problems previously identified in its Equal Employment Opportunity Program and the results of such actions.

c. A description of the problem areas which require attention and of the actions which will be taken to resolve such problems.

d. The annual agency progress report shall provide the information required by 2(b) and (c) on a cumulative basis and an updated compilation and statistical analysis of the data required by these guidelines.

e. A statistical report on the operations of the agency's informal complaint procedure.

3. Operation of the City Program

a. At the request of either the individual agency, the Department of Personnel or the City Commission on Human Rights, the Agency, the Department of Personnel, City Commission on Human Rights and/or the Law Department shall meet to discuss and review the implementation and progress of the City Program.

b. Each agency shall advise the Law Department, Department of Personnel and the City Commission on Human Rights of requests or inquiries by federal or state agencies concerning affirmative action/equal employment opportunity. Each agency shall advise the Law Department or any complaint, notice of complaint, and administrative or court proceeding filed.

c. The Department of Personnel, City Commission on Human Rights and the Law Department shall report to the Mayor annually on the operation of the City EEO Program or more frequently as the Mayor may require. Such report shall include, at a minimum: 1) The Department of Personnel and City Commission on Human Rights reviews of the progress of agency programs; 2) The Department of Personnel, City Commission on Human Rights and Law Department review of the progress of the City program; and 3) recommendations for change or modification in existing programs, proposed legislation or such other actions as may be necessary to carry out the City's program of equal employment opportunity .

d. The Department of Personnel, City Commission on Human Rights and the Law Department shall prepare and submit a report on the handicapped and disabled in City employment to the Mayor on or before March 1,1975. Such report shall include an analysis of the workforce composition as conducted and prepared by the City Commission on Human Rights and recommendations for increase in employment opportunities and advancement in employment of the disabled and handicapped. Upon approval by the Mayor, the recommendations contained in the report shall take effect through appropriate orders.

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

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c/o Sara E. Steinbock, Esquire
Attorney at Law
1 Chase Manhattan Plaza
New York, New York 10005

Re: EEOC Charges Against New York City Police Department and New York City Department of Personnel
Nos. TNY5-1100, TNY5-1101, TNY5-1102
TNY5-1104 and TNY5-1105

Dear Members of Guardians Association NYPD:

Because the above charges were filed on your behalf, and more than 180 days have elapsed since the Equal Employment Opportunity Commission assumed jurisdiction over those charges, and no suit based on those charges has been filed by this Department, and since you through your attorney have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq., against the above-named respondents.

If you choose to commence a civil action, such suit must be filed in the appropriate United States District Court within 90 days of your receipt of this Notice.

Your attorney may inspect the investigative file pertaining to your case at a time and place convenient to the parties. That file is located in the EEOC District Office, at 90 Church Street, Room 1301, New York, New York 10007.

We request that you send this Department a copy of any complaint initiating suit.

This Notice should not be taken to mean that the Department of Justice has made a judgment as to whether or not your charge is meritorious.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

By: Herbert A. Goldsmith Jr.
HERBERT A. GOLDSMITH, JR.
Attorney
Employment Section

cc: Arthur W. Stern
District Director
New York District Office
Equal Employment Opportunity
Commission
90 Church Street, Room 1301
New York, New York 10007

THE CITY OF NEW YORK OFFICE OF THE MAYOR ABRAHAM D. BEAME

Tel. 566-5090

293-75

For Release:
Thursday, August 14, 1975, 6:00 P.M.

Mayor Abraham D. Beame today released the City's Actual Use Revenue Sharing Report for Fiscal Year 1974-75, noting that the current federal payment schedule in effect forces the City to incur $5.5 million in borrowing costs annually.

The report covers the expenditure of Federal General Revenue Sharing funds between July 1, 1974 and June 30, 1975. It reflects General Revenue Sharing funds actually received during Fiscal Year 1975.

Mayor Beame said:

"Under the present system, we are officially informed each May of our entitlement for the future fiscal year. We then budget those funds.

"However, the Treasury Department transfers the money to New York and other jurisdictions in quarterly payments made at the end of each quarter. Thus we must borrow in anticipation of these funds at average short term interest costs of $5.5 million annually. In fact, the final payment for the Fiscal Year 74-75 entitlement was not made until early July, 1975.

"This spring, I pointed out this problem in a letter to the Treasury Secretary and requested more timely transmittal of this aid. That request was rejected."

(more)

Per U.S. Treasury regulations, the City expended 1974-75 general revenue sharing funds received as follows:

	1974-75 (millions)
Police Department Crime Prevention & Control	140.487
Fire Department Extinguishment & Fire Prevention	68.036
EPA - Sanitation Department Street Cleaning & Refuse Collection	51.157
	$259.680

GENERAL REVENUE SHARING

ACTUAL USE REPORT

(5)

GENERAL REVENUE SHARING PROVIDES FEDERAL FUNDS DIRECTLY TO LOCAL AND STATE GOVERNMENTS. YOUR GOVERNMENT MUST PUBLISH THIS REPORT ADVISING YOU HOW THESE FUNDS HAVE BEEN USED OR DELEGATED DURING THE YEAR FROM JUL. 1 1974 THRU JUNE 30 1975. THIS IS TO INFORM YOU OF YOUR GOVERNMENT'S PRIORITIES AND TO ENCOURAGE YOUR PARTICIPATION IN DECISIONS ON HOW FUTURE FUNDS SHOULD BE SPENT. NOTE: ANY COMPLAINTS OF DISCRIMINATION IN THE USE OF THESE FUNDS MAY BE SENT TO THE OFFICE OF REVENUE SHARING, WASHINGTON, D.C. 20226.

ACTUAL EXPENDITURES (A) CATEGORIES	(B) CAPITAL	(C) OPERATING MAINTENANCE
1 PUBLIC SAFETY	$	$208,523,377
2 ENVIRONMENTAL PROTECTION	$	$ 51,157,042
3 PUBLIC TRANSPORTATION	$	$
4 HEALTH	$	$
5 RECREATION	$	$
6 LIBRARIES	$	$
7 SOCIAL SERVICES FOR THE POOR OR POOR	$	$
8 FINANCIAL ADMINISTRATION	$	$
9 MULTIPLE PURPOSE AND GENERAL GOVT	$	
10 EDUCATION	$	
11 SOCIAL DEVELOPMENT	$	
12 HOUSING & COMMUNITY DEVELOPMENT	$	
13 ECONOMIC DEVELOPMENT	$	
14 OTHER (Specify)	$	
15 TOTALS	$	$259,680,419

NONDISCRIMINATION REQUIREMENTS HAVE BEEN MET

(S) CERTIFICATION: I certify that I am the Chief Executive Officer and authorized to the expenditure of funds reported herein. I certify that they have not been used in violation of either the civil rights requirement (Section 103) or the matching/funds prohibition (Section 103) of the Act.

Signature of Chief Executive — Date 9/19/75

ABRAHAM D. BEAME MAYOR
Name and Title

THE GOVERNMENT OF NEW YORK CITY

Amount Received Gross — Revenue Sharing Payments Starting — $259,680,419

Payment Date — Fiscal Year Ending

ACCOUNT NO 33 2 031 001

NEW YORK CITY 250
FINANCE ADMINISTRATOR
MUNICIPAL BUILDING ROOM 300
NEW YORK N Y 10007

*Amount budgeted for FY 74-75 differs from actual use amount due to NYC budgeting g.r.s. on accrual basis(entitlement amt.) rather than cash basis.

(D) TRUST FUND REPORT (refer to instruction D)

1 Balance as of June 30 1974	$ 0
2 Revenue Sharing Funds Received from July 1, 1974 thru June 30, 1975	$ 259,680,419
3 Interest Received or Credited (July 1, 1974 thru June 30, 1975)	$ 0
4 Funds Released from Obligations	$ 0
5 Sum of lines 1, 2, 3, 4	$ 259,680,419
6 Funds Returned to ORS	$ 0
7 Total Funds Available	$ 259,680,419
8 Total Amount Expended (Sum of line 15 column B and column C)	$ 259,680,419 *
9 Balance as of June 30 1975	$ 0

(E) THE NEWS MEDIA HAVE BEEN ADVISED THAT A COMPLETE COPY OF THIS REPORT HAS BEEN PUBLISHED IN A LOCAL NEWSPAPER OF GENERAL CIRCULATION. I HAVE A COPY OF THIS REPORT AND RECORDS DESCRIBING THE CONTENTS. THEY ARE OPEN FOR PUBLIC SCRUTINY AT Municipal Ref. Library, Municipal Building, NYC 10007

IMPORTANT: [illegible]

(F) TAXES AND DEBT (refer to instruction G)

How the availability of Revenue Sharing funds enabled your government to: (Check as many as apply.)

- [ ] Prevent new taxes
- [ ] Maintain current tax levels
- [ ] Reduce taxes
- [ ] Prevent new debts
- [ ] Prevent increased taxes
- [ ] Reduce old debts

(H) PUBLICATION (refer to instruction H)

The cover page of this report was published in the following newspaper on the stated date at a cost of → $ 917.80

Name of Newspaper: New York Daily News

Date Published: August 15, 1975

(I) Person completing this report (Please print)

RICHARD BING, DIRECTOR, OFFICE OF FEDERAL/STATE PROGRAM REVIEW
Name

212 566-2984
(Area code) Telephone Number

DO NOT WRITE IN THIS SPACE FOR REVENUE SHARING USE ONLY

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2	2																
2	3																
2	4																

THIS REPORT MUST BE RECEIVED BEFORE SEPTEMBER 1, 1975 BY OFFICE OF REVENUE SHARING
2401 E STREET N.W.
WASHINGTON, D.C. 20226

ORIGINAL COPY BLUE TO OFFICE OF REVENUE SHARING

FORM 1 SEP 75

FORM NO 3101 MARCH 1975

THE CITY OF NEW YORK OFFICE OF THE MAYOR ABRAHAM D. BEAME

Tel: 566-5090 289-76

For Release:
Tuesday PM's, August 24, 1976

Mayor Abraham D. Beame today issued the Actual Use Revenue Sharing Report for Fiscal Year 1976, at same time calling for the extension of the general revenue sharing program.

This report, which is mandated by Federal regulations, covers the expenditure of general revenue sharing funds actually received during this period July 1, 1975 through June 30, 1976 by the City of New York.

Mayor Beame said that continuation of the revenue sharing program is vital to the City's fiscal well-being. "The revenue sharing program," said the Mayor, "is a critical component of the financial plan for Fiscal Years 1977 and 1978. Without the continuation of this program we would be forced to find alternative revenues or cost reductions. I urge the Congress to give this matter its utmost consideration."

The report issued today outlines the following expenditures:

PUBLIC SAFETY	1975-76 (millions)
POLICE	
Crime Prevention & Control	$150.655
FIRE	
Extinguishment & Fire Prevention	66.980
ENVIRONMENTAL PROTECTION	
SANITATION (EPA)	
Street cleaning & Refuse Collection	44.047
	$261.682

Plaintiff's Appendix - M - Revenue Sharing Reports

All general revenue sharing checks sent to you from July 1, 1973, thru June 30, 1976, are listed below with the date, number, and amount of the payment. The total of these payments is also displayed in the upper right corner and on the top of the Trust Fund block (D) of the attached Actual Use Report. This list of payments usually includes the last check issued in Entitlement Period Five and the first three checks issued in Entitlement Period Six.

Name: NEW YORK CITY

Account Number: 33 2 031 001

Date	Number	Amount
07/07/75	93459334	$ 64,188,515
10/06/75	93459184	$ 65,331,494
01/05/76	93459353	$ 65,331,494
04/05/76	93459368	$ 65,331,494

TOTAL $261,682,997

IMPORTANT

If your records show a lower total payment of general revenue sharing funds during this period, please identify from this listing the check(s) you did not receive. Send a letter to the Office of Revenue Sharing listing the check number, date, and amount of the check(s) you did not receive. If you have received checks during this period which are not included in this listing, please send a letter to the Office of Revenue Sharing listing the check number, date, and amount of the check(s) not included above.

Please send the check information for either missing payments or additional payments directly to:

Manager, Systems & Operations

Office of Revenue Sharing

2401 E Street, NW

Washington, D.C. 20226

BEST COPY AVAILABLE

	$	$217,636,297
	$	$ 44,046,700
	$	$
	$	$
	$	$
	$	$
	$	$
	$	$
	$	$
	$	$
	$	$
	$	$
	$	$
	$	$
	$	$
	$	$261,682,997

NEW YORK CITY

$261,682,997

DURING THE PERIOD JULY 1, 1975 THRU JUNE 30, 1976

✓ ACCOUNT NO. 33 2 031 001
NEW YORK CITY
FINANCE ADMINISTRATOR
MUNICIPAL BUILDING ROOM 600
NEW YORK N Y 10007

Amount budgeted for Fiscal Year 1976 differs from "Actual Use Amount" because FY 76 entitlement is budgeted rather than actual cash received during the City's fiscal year.

1. Balance as of June 30, 1975	$ 0
2. Revenue Sharing Funds Received (July 1, 1975 thru June 30, 1976)	$ 261,682,997
3. Interest Earned or Credited (July 1, 1975 thru June 30, 1976)	$ 0
4. Funds Released from Obligations (IF ANY)	$ 0
5. Sum of lines 1, 2, 3, 4	$ 261,682,997
6. Funds Returned to ORS (IF ANY)	$ 0
7. Total Funds Available	$ 261,682,997
8. Total Amount Expended (Sum of line 15, column B and column C)	$ 261,682,997
9. Balance as of June 30, 1976	$ 0

THE NEWSPAPER HAS BEEN ADVISED THAT A COMPLETE COPY OF THIS REPORT IS SUBMITTED FOR PUBLICATION AS PER OFFICE OF GENERAL CIRCULATION. WE HAVE A COPY OF THIS REPORT AND RECORDS DOCUMENTING THE CONTENTS. THEY ARE OPEN FOR PUBLIC SCRUTINY AT Municipal Reference Library, Municipal Bldg. N.Y.C.

IF ALL REQUIREMENTS HAVE BEEN MET
[illegible] 8/19/76
Date
Alphonse D. Beame

IMPORTANT: THE UPPER HALF OF THIS PAGE MUST BE PUBLISHED (SEE INSTRUCTION H)
It is not required that the lower half of this form be published.

(Check as many as apply)

- ☐ Prevent new taxes
- ☐ Maintain current tax levels
- ☐ Reduce taxes
- ☑ Prevent new debts
- ☐ Prevent increased taxes
- ☐ Reduce old debts

Report submitted by (Please print)

Richard Bing — Deputy Assistant Director
Name — Title

212 566-1193
(Area code) Telephone Number

PUBLICATION (refer to instruction H)

The upper part of this report was published in the newspaper on the stated date at a cost of $ 362.00

✓ Name of Newspaper New York Post

Date Published August 24, 1976

DO NOT WRITE IN THIS SPACE
FOR REVENUE SHARING USE ONLY

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2	2																
2	3																
2	4																

THIS REPORT MUST BE RECEIVED BEFORE SEPTEMBER 1, 1976 BY: OFFICE OF REVENUE SHARING
2401 E STREET, N.W.
WASHINGTON, D.C. 20226

ORIGINAL COPY - SEND TO OFFICE OF REVENUE SHARING

000033